

BCI EXHIBIT

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1
2 BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
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5
6 In Re:

Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al.,

(Jointly Administered)

9
10 Debtors.
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12
13 RULE 30(b)(6)
14 VIDEOTAPED DEPOSITION
15 OF
16 BARRY W. RIDINGS
17 New York, New York
18 Friday, January 15, 2010
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21
22
23

Reported by:

24 ANNETTE ARLEQUIN, CCR, RPR

JOB NO. 27090
25

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 January 15, 2010 6 9:12 a.m. 7 8 RULE 30(b)(6) videotaped deposition 9 of BARRY W. RIDINGS, held at the law 10 offices of Boies, Schiller & Flexner, LLP, 11 575 Lexington Avenue, 7th Floor, New York, 12 New York, before Annette Arlequin, a 13 Certified Court Reporter, a Registered 14 Professional Reporter and Notary Public of 15 the State of New York. 16 17 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: DAVID L. CARDEN, ESQ. 9 BART GREEN, ESQ. 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays Capital 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JONATHAN D. SCHILLER, ESQ. 16 HAMISH HUME, ESQ. 17 JONATHAN KRISBERGH, ESQ. 18 NICHOLAS KEMP, ESQ. 19 20 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 21 Attorneys for the Creditors Committee 22 51 Madison Ave - 22nd Floor 23 New York, New York 10010 24 BY: ROBERT D. DAKIS, ESQ. 25 TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 4</p> <p>1 2 APPEARANCES: (Cont'd.) 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: SETH D. ROTHMAN, ESQ. 9 10 CRAVATH, SWAINE & MOORE, LLP 11 Attorneys for the Witness 12 Worldwide Plaza 13 825 Eighth Avenue 14 New York, New York 10019-7475 15 BY: HECTOR J. VALDEZ, ESQ 16 THOMAS G. RAFFERTY, ESQ 17 18 19 20 21 22 ALSO PRESENT: 23 CARLOS LOPEZ, Legal Video Specialist 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 5</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED by 3 and between the attorneys for the 4 respective parties herein, that filing and 5 sealing be and the same are hereby waived. 6 IT IS FURTHER STIPULATED AND AGREED 7 that all objections, except as to the form 8 of the question, shall be reserved to the 9 time of the trial. 10 IT IS FURTHER STIPULATED AND AGREED 11 that the within deposition may be sworn to 12 and signed before any officer authorized to 13 administer an oath, with the same force and 14 effect as if signed and sworn to before the 15 Court. 16 17 - o0o - 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>

Page 6	Page 7
<p>1 Ridings</p> <p>2 (Deposition Exhibit 561A, Document</p> <p>3 Bates stamped LAZ-A-00004543 through 4549,</p> <p>4 marked for identification, as of this</p> <p>5 date.)</p> <p>6 (Deposition Exhibit 562A, Email dated</p> <p>7 9/18/08 from Creswell to Distribution at</p> <p>8 Lazard NYC, Bates stamped LAZ-C-00049033 to</p> <p>9 49041, marked for identification, as of</p> <p>10 this date.)</p> <p>11 (Deposition Exhibit 563A, Email dated</p> <p>12 9/18/08 from Descoteaux to Ridings, Bates</p> <p>13 stamped LAZ-C-00049400 through 49405,</p> <p>14 marked for identification, as of this</p> <p>15 date.)</p> <p>16 (Deposition Exhibit 564A, Email dated</p> <p>17 10/8/08 from Descoteaux to Ridings and</p> <p>18 Whiting with attachment, Bates stamped</p> <p>19 LAZ-C-00063724 through 63817, marked for</p> <p>20 identification, as of this date.)</p> <p>21 * * *</p> <p>22 THE VIDEOGRAPHER: This is the start</p> <p>23 of tape labeled No. 1 of the videotaped</p> <p>24 deposition of Barry W. Ridings in the</p> <p>25 matter In Re: Lehman Brothers Holdings</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 Inc.</p> <p>3 This deposition is being held at 575</p> <p>4 Lexington Avenue, New York, New York on</p> <p>5 January 15th, 2010 at approximately 9:12</p> <p>6 a.m.</p> <p>7 My name is Carlos Lopez from TSG</p> <p>8 Reporting, Inc. and I am the legal video</p> <p>9 specialist.</p> <p>10 The court reporter is Annette</p> <p>11 Arlequin in association with TSG Reporting.</p> <p>12 Will the court reporter please swear</p> <p>13 in the witness.</p> <p>14 * * *</p> <p>15 BARRY W. RIDINGS, called as a</p> <p>16 witness, having been duly sworn by a</p> <p>17 Notary Public, was examined and testified</p> <p>18 as follows:</p> <p>19 EXAMINATION BY</p> <p>20 MR. SCHILLER:</p> <p>21 Q. Good morning, Mr. Ridings.</p> <p>22 A. Good morning.</p> <p>23 Q. My name is Jonathan Schiller and I</p> <p>24 represent Barclays in this matter.</p> <p>25 Would you please state for the record</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 8	Page 9
<p>1 Ridings</p> <p>2 your name and your position at Lazard?</p> <p>3 A. Barry Ridings, R-i-d-i-n-g-s.</p> <p>4 I'm vice chairman of investment</p> <p>5 banking at Lazard.</p> <p>6 I'm a managing director of the firm</p> <p>7 and I co-head our global restructuring group.</p> <p>8 I'm also chairman of Lazard Capital</p> <p>9 Markets, which is our securities business and I</p> <p>10 am also chairman of Lazard Middle Markets, which</p> <p>11 is our middle market M&A practice.</p> <p>12 Q. Let's begin with the week</p> <p>13 September 15th through September 19th, 2008 if</p> <p>14 we can.</p> <p>15 And do you recall appearing in court</p> <p>16 before Judge Peck with Harvey Miller and</p> <p>17 Mr. McDade on the 19th at the sale approval</p> <p>18 hearing?</p> <p>19 A. Yes.</p> <p>20 Q. Can you describe the engagement of</p> <p>21 Lazard in the week preceding that hearing?</p> <p>22 A. Yes. On that Monday we got a phone</p> <p>23 call from, I think it was Weil, Gotshal, asking</p> <p>24 if we could come over for an hour or two, and I</p> <p>25 arrived at Lehman's building kind of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 mid-afternoon and I don't think I left Lehman's</p> <p>3 building for about 48 hours. It turned out to</p> <p>4 be longer than an hour or two.</p> <p>5 And what we were asked to do is to</p> <p>6 get re-engaged by Lehman, now in bankruptcy, to</p> <p>7 act as their financial advisor. That's a broad</p> <p>8 description of our assignment.</p> <p>9 Q. Thank you.</p> <p>10 During the course of that period</p> <p>11 September 15th through September 19th, did you</p> <p>12 reach a view whether there was a realistic</p> <p>13 opportunity to sell the Lehman North American</p> <p>14 business to any entity other than the Barclays?</p> <p>15 MR. DAKIS: Objection to form.</p> <p>16 MR. CARDEN: Objection.</p> <p>17 A. Again, to put things in context, that</p> <p>18 was, and again, I've been doing this for</p> <p>19 35 years, we were in unprecedented times and the</p> <p>20 fact that an entity like Lehman Brothers could</p> <p>21 actually file bankruptcy was unbelievable.</p> <p>22 At the same point you had Bear</p> <p>23 Stearns having just melted and been sold to</p> <p>24 JPMorgan.</p> <p>25 You had the problems at AIG and you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 10	Page 11
<p>1 Ridings</p> <p>2 also had problems at Merrill Lynch, Morgan</p> <p>3 Stanley, Goldman Sachs, and the securities</p> <p>4 markets were probably in the worst condition</p> <p>5 ever that one could imagine.</p> <p>6 And so there had been efforts made</p> <p>7 before the bankruptcy to do a transaction with a</p> <p>8 number of parties. None of those came to</p> <p>9 fruition. Lehman files bankruptcy. They're</p> <p>10 reapproached by Barclays to do a transaction.</p> <p>11 In my mind I don't think there was an</p> <p>12 alternative transaction available that could</p> <p>13 have been done on any timely basis and the</p> <p>14 passage of time was so critical given the</p> <p>15 pressures on the market that this was not a</p> <p>16 situation where you could take months or even</p> <p>17 weeks to do a transaction.</p> <p>18 Q. Let me just try to understand the</p> <p>19 last part of what you said.</p> <p>20 By September 19th, 2008, had you</p> <p>21 concluded that there was no alternative</p> <p>22 transaction to the proposed sale to Barclays?</p> <p>23 MR. CARDEN: Objection to form.</p> <p>24 MR. DAKIS: Same objection.</p> <p>25 A. That's correct.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 Q. By September 19th, 2008, did you have</p> <p>3 a view if the sale were not approved by Judge</p> <p>4 Peck pursuant to Weil, Gotshal's motion that the</p> <p>5 liquidation of the Lehman North American</p> <p>6 business would pose enormous risks?</p> <p>7 MR. CARDEN: To whom?</p> <p>8 Objection.</p> <p>9 MR. DAKIS: Same objection.</p> <p>10 MR. SCHILLER: Let me rephrase that.</p> <p>11 BY MR. SCHILLER:</p> <p>12 Q. If there were no sale approved to</p> <p>13 Barclays on September 9th, did you have a view</p> <p>14 whether there would be the risk of enormous loss</p> <p>15 to Lehman?</p> <p>16 A. That is my view, and more so if this</p> <p>17 transaction didn't happen, I think the</p> <p>18 repercussions in the financial market would have</p> <p>19 been catastrophic to a number of other financial</p> <p>20 institutions.</p> <p>21 So the reverberation of a Lehman</p> <p>22 liquidation would have had a major negative</p> <p>23 impact on the U.S. capital markets.</p> <p>24 Q. You had past experience with Drexel</p> <p>25 Burnham and the failure of that investment bank;</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 12	Page 13
<p>1 Ridings</p> <p>2 is that correct?</p> <p>3 A. Unfortunately, yes, I was a managing</p> <p>4 director at Drexel when it also went bankrupt.</p> <p>5 Q. And did your experience there help</p> <p>6 inform the views that you held on September 19th</p> <p>7 as you've just described?</p> <p>8 A. Yes.</p> <p>9 Q. Was it possible to calculate the</p> <p>10 potential losses to Lehman of a liquidation as</p> <p>11 of September 19th with any certainty?</p> <p>12 A. I don't think you could have done it</p> <p>13 with certainty because you would have been</p> <p>14 making assumptions.</p> <p>15 But in a financial meltdown of this</p> <p>16 magnitude, the prices of securities would have</p> <p>17 dropped by enormous amounts.</p> <p>18 Q. And it was your view on September 9th</p> <p>19 that a sale to Barclays was superior to any</p> <p>20 liquidation by Lehman?</p> <p>21 MR. DAKIS: Object to the form.</p> <p>22 A. Yes.</p> <p>23 Q. Since September 19th, have you</p> <p>24 learned anything that would cause you to change</p> <p>25 that conclusion?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 A. No. I believe today that there was</p> <p>3 no other alternative; that that was the best</p> <p>4 alternative at the time.</p> <p>5 Q. Let me ask you to look at the Asset</p> <p>6 Purchase Agreement, which is Exhibit 1 in this</p> <p>7 proceeding, and I'm not going to ask you to</p> <p>8 review it, I just want you to have it in mind.</p> <p>9 You've seen the APA before, have you</p> <p>10 not?</p> <p>11 A. Yes.</p> <p>12 Q. Did the APA provide for the purchase</p> <p>13 of a business and its employees?</p> <p>14 MR. CARDEN: Objection.</p> <p>15 MR. DAKIS: Same objection.</p> <p>16 MR. ROTHMAN: Same objection.</p> <p>17 A. In -- the Asset Purchase Agreement</p> <p>18 provides whatever it says it provides for. In</p> <p>19 my mind, Barclays did buy a business and it was</p> <p>20 described in the Asset Purchase Agreement.</p> <p>21 Q. Was the sale to Barclays a precise</p> <p>22 exchange of equal values of assets and</p> <p>23 liabilities?</p> <p>24 MR. DAKIS: Objection to form.</p> <p>25 A. It was not a precise exchange.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 14

1 Ridings
2 Again, Barclays, in my mind, bought a business
3 and they paid certain cash, they assumed certain
4 liabilities and that's the value that they paid
5 the estate, and for that they got certain assets
6 and they got certain fixed assets and intangible
7 assets and people.
8 Q. Let me ask you to look at the second
9 exhibit that I've placed in front of you,
10 Exhibit 25 in this proceeding, which is a
11 clarification letter between Lehman and
12 Barclays.
13 Do you see that?
14 A. Yes.
15 Q. When you were in court on
16 September 19th, at the time of your proffer to
17 Judge Peck, did you understand that the sale
18 documentation that Judge Peck was being asked to
19 approve included a Clarification Agreement that
20 was to be completed between the parties?
21 A. I believe that's correct.
22 Q. Let me ask you to look at the first
23 page of the Clarification Agreement, Exhibit 25,
24 and direct your attention to paragraph 1 (ii)
25 under "Purchased Assets."
TSG Reporting - Worldwide 877-702-9580

Page 16

1 Ridings
2 Q. Do you also see that there are no
3 values given for these purchased assets in the
4 Clarification Agreement?
5 A. That's correct.
6 Q. The sale to Barclays was the purchase
7 of a business and the assets that went with the
8 business to the extent they were not excluded,
9 irrespective of what their value was, correct?
10 MR. DAKIS: Objection to form.
11 MR. CARDEN: Objection to form.
12 MR. ROTHMAN: Objection.
13 A. Again, my understanding is that
14 Barclays bought a business and in buying that
15 business they paid a certain amount of cash and
16 assumed certain liabilities, and for that they
17 got the assets in that business.
18 So I'm not sure if I answered your
19 question, but that is my understanding of the
20 transaction.
21 Q. And values, specific values
22 associated with those assets, whether estimated
23 or otherwise, were not provided for in the APA
24 or the clarification letter, correct?
25 MR. CARDEN: Objection to form.
TSG Reporting - Worldwide 877-702-9580

Page 15

1 Ridings
2 Do you see that?
3 A. Yes.
4 Q. And in that paragraph which addresses
5 the definition of purchased assets, the parties
6 identify assets that are going to be transferred
7 to Barclays, including, as you see under letter
8 A, the securities that are subject to the
9 Barclays Repurchase Agreement.
10 Do you see that?
11 A. Yes.
12 Q. And under paragraph B, Barclays is to
13 receive such securities and other assets held in
14 LBI's clearance boxes at the time of the
15 closing.
16 Do you see that?
17 A. Yes.
18 Q. And if I may ask you just to turn the
19 page and to note paragraph C which provides a
20 transfer to Barclays of exchange-traded
21 derivatives and any property that may be held to
22 secure obligations under such derivatives and
23 collateralized short-term agreements.
24 Do you see that?
25 A. Yes.
TSG Reporting - Worldwide 877-702-9580

Page 17

1 Ridings
2 MR. DAKIS: Same objection.
3 MR. ROTHMAN: Same objection.
4 A. That's correct.
5 Q. Was this deal structured to be a
6 precise wash, Mr. Ridings?
7 MR. CARDEN: Objection to form.
8 MR. DAKIS: Objection.
9 A. I do not think it was structured that
10 way.
11 Q. Do you know whether there was
12 disagreement between Barclays and Lehman over
13 the actual values of assets or liabilities
14 involved in the transaction?
15 MR. CARDEN: Objection to form.
16 MR. DAKIS: Same objection.
17 MR. ROTHMAN: Join in the objection.
18 A. Yes.
19 Q. What was your understanding generally
20 of such disagreement?
21 A. My understanding is that, to put it
22 in context, we had a tumultuous week where the
23 market was extremely volatile and generally on a
24 down trend, and that throughout that week
25 Barclays had made the point that Lehman's marks
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Page 18

1 Ridings
2 were not market or stale and that there was a
3 disagreement as to what the market value of
4 those securities actually were.
5 Q. To your knowledge, was there
6 uncertainty that week over the values of the
7 assets or liabilities that were involved in the
8 transaction?
9 MR. CARDEN: Objection to form.
10 MR. DAKIS: Same objection.
11 A. Absolutely.
12 Q. Do you recall that the agreement
13 between the parties provided for no
14 representations or warranties concerning the
15 values of the assets and the liabilities in the
16 transaction?
17 A. I think that's generally correct.
18 Q. Was it also your understanding that
19 the purchase agreement, Exhibit 1 before you,
20 contained, as of September 19th, contained no
21 true-up or profit sharing mechanism?
22 A. In this document, in the APA that was
23 signed, that's correct.
24 Q. And as a result of that, is it fair
25 to say that the parties provided no contractual
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Page 20

1 Ridings
2 by any chance?
3 A. Yes.
4 Q. Who did?
5 A. I did.
6 Q. All right. Does this reflect that
7 you received this schedule on 9/18?
8 A. Yes.
9 Q. If you look at the assets listed
10 there on the left side of the schedule, it
11 provides for none of the intangible assets
12 associated with the business sold to Barclays,
13 does it?
14 A. No.
15 Q. If you compare the totals for those
16 assets on page 4543 to the next page, 4544,
17 which is dated 9/16/08 at the top on the right
18 side.
19 Do you see that?
20 A. Yes.
21 Q. You see there is a change in the
22 estimate of the assets from \$62.7 billion on the
23 9/18 balance sheet to \$57.9 billion on the
24 September 18th draft balance sheet, correct?
25 MR. CARDEN: Objection to form.
TSG Reporting - Worldwide 877-702-9580

Page 19

1 Ridings
2 mechanism to make sure that the assets and the
3 liabilities involved in the transaction
4 ultimately matched?
5 MR. CARDEN: Objection to form.
6 MR. DAKIS: Objection to form.
7 MR. ROTHMAN: Same objection.
8 A. I don't think it was part of the
9 transaction that there was to be a match.
10 Q. Thank you.
11 Let me ask you to turn to the next
12 exhibit that we placed before you, 561A.
13 A. Yes.
14 Q. 561A are six pages of documents,
15 various schedules and time lines produced from
16 Lazard's records, Mr. Ridings, and let me ask
17 you to look first at the first page of the
18 exhibit, page 4543.
19 Do you see the part of this schedule
20 referred to as "Assets"?
21 A. Yes.
22 Q. And do you see the date on the top
23 right corner of 9/18/08?
24 A. Yes.
25 Q. Do you know who wrote that date there
TSG Reporting - Worldwide 877-702-9580

Page 21

1 Ridings
2 MR. DAKIS: Same objection.
3 A. Yes.
4 Q. Does this change reflect the downward
5 values that you were referring to earlier in
6 your testimony?
7 MR. CARDEN: Objection to form.
8 MR. DAKIS: Join in the objection.
9 A. Just to be clear, the second page,
10 544, again, there's a date on the upper right
11 corner, but it appears to be set up roughly
12 similar to the first page that had my notes on
13 it.
14 There's one or two very slight
15 variations and obviously there are no headers
16 and it has a different date on it, and I believe
17 that SB is Steve Berkenfield's initials.
18 Q. Right.
19 A. But again, you can get the same point
20 that you're making on the first page, that in
21 those couple of days there was dramatic
22 decreases in the price of securities.
23 Q. Turning again to what is not on page
24 4543 under "Assets," I asked you whether there
25 were intangible assets associated with the
TSG Reporting - Worldwide 877-702-9580

Page 22	Page 23
<p>1 Ridings</p> <p>2 business that was being sold to Barclays that</p> <p>3 are not reflected there and I believe you said</p> <p>4 that is correct.</p> <p>5 A. Yes.</p> <p>6 Q. And to explore that briefly, there's</p> <p>7 no reflection of purchased fixtures, fittings or</p> <p>8 software listed among the assets there, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. There are no transferred properties</p> <p>11 leases listed there; isn't that right?</p> <p>12 A. Correct. There are no fixed assets</p> <p>13 either.</p> <p>14 Q. There are no fixed assets either.</p> <p>15 A bit later on I'm going to take you</p> <p>16 to a larger balance sheet and return to this</p> <p>17 subject.</p> <p>18 On the question of a wash, which I</p> <p>19 mentioned a few minutes ago, did Lazard proffer</p> <p>20 to the court at any time that this transaction</p> <p>21 was to be a wash?</p> <p>22 A. No.</p> <p>23 Q. Did you in fact believe on</p> <p>24 September 19th that this transaction was going</p> <p>25 to be a wash?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 A. Again, just to be clear what you mean</p> <p>3 by wash, because that's not a term I've been</p> <p>4 using, but that everything sold equals</p> <p>5 everything purchased.</p> <p>6 Q. That's right.</p> <p>7 A. No.</p> <p>8 Q. Let me ask you to turn to the next</p> <p>9 exhibit, I'm going to hold this one off because</p> <p>10 we're going to return to this, which is 562A, a</p> <p>11 six-page set of news articles distributed in</p> <p>12 Lazard on September 18, 2008.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And I'm just going to ask you about</p> <p>16 the last page.</p> <p>17 A. The very last page?</p> <p>18 Q. The very last page of that exhibit,</p> <p>19 which is part of a Reuters report.</p> <p>20 You will see that by turning the page</p> <p>21 before just to understand the context of what</p> <p>22 I'm going to ask you to look at.</p> <p>23 And this is a report on the impending</p> <p>24 sale. The second full paragraph on the last</p> <p>25 page of 5628 says, "The deal would also lift</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 24	Page 25
<p>1 Ridings</p> <p>2 Barclays' capital ratio even before the bank</p> <p>3 completes a planned capital injection alongside</p> <p>4 the deal because of a negative goodwill</p> <p>5 adjustment from the deal amounting to about</p> <p>6 \$2 billion after tax."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Does Barclays' statement on</p> <p>10 September 17th as reported here by Reuters that</p> <p>11 it expected to record a multibillion dollar</p> <p>12 acquisition gain on the transaction, is that</p> <p>13 statement inconsistent in any way with your</p> <p>14 proffer in testimony to the court on</p> <p>15 September 19th?</p> <p>16 MR. CARDEN: Objection to form.</p> <p>17 MR. DAKIS: Same objection.</p> <p>18 MR. ROTHMAN: Join in the objection.</p> <p>19 A. Again, my proffer didn't speak to how</p> <p>20 Barclays is going to account for a transaction</p> <p>21 and I don't know how Barclays accounted for the</p> <p>22 transaction.</p> <p>23 But my proffer was that this was the</p> <p>24 highest and best alternative that we had. In</p> <p>25 fact the only alternative that we had.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 Q. As the Reuters article reports,</p> <p>3 Barclays made an announcement of this gain,</p> <p>4 anticipated gain, two days before the hearing.</p> <p>5 Is that a surprise to you that</p> <p>6 Barclays anticipated a gain on this acquisition?</p> <p>7 MR. DAKIS: Objection to the form.</p> <p>8 BY MR. SCHILLER:</p> <p>9 Q. As of September 19th.</p> <p>10 MR. CARDEN: Objection to form.</p> <p>11 MR. DAKIS: Objection.</p> <p>12 MR. ROTHMAN: Objection.</p> <p>13 A. It's not a surprise to me, but it's</p> <p>14 Barclays' accounting, so again, I'm not going to</p> <p>15 put a lot of relevance on the U.K. accounting</p> <p>16 for this.</p> <p>17 Q. To your knowledge, there was no</p> <p>18 limitation on whether Barclays could profit from</p> <p>19 this trade, correct?</p> <p>20 MR. CARDEN: Objection to form.</p> <p>21 MR. DAKIS: Same objection.</p> <p>22 MR. ROTHMAN: Join in the objection.</p> <p>23 A. That's correct.</p> <p>24 Just to be clear, if Barclays lost</p> <p>25 money on this transaction, it would have been</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 26

1 Ridings
2 the end of the U.S. capital markets.
3 Q. Let me ask you to turn to the next
4 exhibit, 377A, which is Barclays' disclosed
5 acquisition gain on this transaction. The
6 document was generated in February of 2009.
7 If you look at page 5844, you see the
8 valuation by Barclays of the financial assets
9 that it had purchased on September 22nd
10 amounting to \$50 billion?
11 A. Yes.
12 Q. 160?
13 And it goes on below that to list
14 some of the other assets, some of which we
15 discussed earlier; intangibles, real estate,
16 fixtures, fittings and software.
17 Do you see that?
18 A. Yes.
19 Q. And that leaves a total of
20 \$53,540,000,000 of assets acquired in the
21 transaction, correct?
22 A. Yes.
23 Q. And then if you return to the first
24 page of Exhibit 377A and you address line 39,
25 the gain on acquisition, you see that Barclays
TSG Reporting - Worldwide 877-702-9580

Page 28

1 Ridings
2 accurate and fair and appropriate?
3 A. I do.
4 Q. During the week of September 19,
5 2008, did you have an understanding whether
6 Barclays and Lehman were engaged in discussions
7 concerning Lehman's marks?
8 A. They were.
9 Q. And did Lehman exercise diligence
10 regarding that process?
11 MR. CARDEN: Objection to form.
12 MR. DAKIS: Same objection.
13 A. Can you clarify the question, please?
14 Q. You were familiar with discussions
15 between Barclays and Lehman concerning Lehman's
16 marks.
17 A. Yes.
18 Q. And did your diligence address those
19 discussions in any way?
20 MR. CARDEN: His diligence?
21 MR. SCHILLER: Lazard's diligence.
22 MR. CARDEN: Objection to form.
23 MR. DAKIS: Same objection.
24 BY MR. SCHILLER:
25 Q. Did Lazard exercise a level of
TSG Reporting - Worldwide 877-702-9580

Page 27

1 Ridings
2 recognized a gain of approximately \$4.2 billion
3 on the acquisition, correct?
4 A. Yes.
5 Q. And is the gain that was recognized
6 as reported here inconsistent in any way with
7 your understanding of the sale on which you
8 proffered testimony on September 19, 2008?
9 MR. CARDEN: Objection.
10 MR. DAKIS: Objection.
11 MR. ROTHMAN: Objection to the form.
12 A. I don't think it's inconsistent.
13 It's just something different, the way Barclays
14 accounts for this.
15 Q. Are you generally familiar with the
16 Rule 60 motion that was filed by Lehman in this
17 proceeding?
18 A. In a very high-level fashion, yes.
19 Q. And in terms of your high-level
20 review of the motion, you understand that it was
21 not filed by Weil, Gotshal, correct?
22 A. That's right.
23 Q. Based on everything that you know as
24 of today, do you believe your proffer in
25 testimony to the court on September 19th was
TSG Reporting - Worldwide 877-702-9580

Page 29

1 Ridings
2 diligence in reaching its opinions as to why
3 this transaction should be approved by the
4 court?
5 MR. CARDEN: Objection to form.
6 MR. DAKIS: Same objection.
7 A. We did due diligence during the week
8 and that supported our conclusions at court.
9 Q. And in the course of doing that
10 diligence, did you become aware of the process
11 in which Barclays and Lehman were engaged
12 concerning Lehman's marks?
13 MR. CARDEN: Objection to form.
14 MR. DAKIS: Same objection.
15 A. Again, it was my understanding that
16 throughout the week Barclays had said that the
17 marks were not appropriate; that they were too
18 high because they were no longer market or
19 stale.
20 I nor anyone on my team were in any
21 meetings where people were talking about
22 specific securities and what the marks should
23 be.
24 Q. In the proffer of your testimony on
25 September 19th, Mr. Miller said that you would
TSG Reporting - Worldwide 877-702-9580

Page 30

1 **Ridings**
2 testify that the parties exchanged numerous bids
3 and asks and turn countless drafts.
4 Do you recall that?
5 A. Yes.
6 Q. In terms of exchanging numerous bids
7 and asks, does that include this process of
8 discussing Lehman's marks?
9 MR. CARDEN: Objection to form.
10 A. It included everything that was being
11 discussed.
12 Q. And including the exchange between
13 the parties concerning Lehman's marks.
14 A. My understanding is that there was
15 significant discussions on what the appropriate
16 marks for various securities were.
17 Q. Let me ask you to look at the next
18 exhibit I've put before you, 563A, which is an
19 email from Mr. Descoteaux to you on
20 September 18, 2008 transmitting prior email,
21 including an email from Gerard Reilly dated
22 September 17, 2008 regarding diligence items.
23 Do you see that?
24 A. Yes.
25 Q. Would you identify Mr. Descoteaux,
TSG Reporting - Worldwide 877-702-9580

Page 32

1 **Ridings**
2 Q. Did you learn that week who Gerard
3 Reilly was by any chance?
4 A. No, I do not know who he is.
5 Q. As far as you know, did you
6 participate in any meetings with Gerard Reilly?
7 A. I don't think so.
8 Q. Mr. Reilly writes to Mr. Kelly on
9 September 17th, page 49402 of Exhibit 563A,
10 Mr. Ridings.
11 A. I'm not sure I know who Martin Kelly
12 is either.
13 I do know Dan Flores.
14 Q. Can you identify Mr. Flores for the
15 record, please?
16 A. I don't know his exact title, but he
17 worked at Lehman Brothers.
18 Q. All right. Reilly's email to these
19 gentlemen says, "The first question is very
20 difficult. My understanding of the deal is that
21 they will purchase our assets that remain in LBI
22 on the closing date, which will not be the same
23 as the assets on the 12th. That purchase will
24 be at a fixed discount on the assets that remain
25 to reflect the bulk side of the purchase. We
TSG Reporting - Worldwide 877-702-9580

Page 31

1 **Ridings**
2 please?
3 A. David is a managing director in the
4 restructuring group at Lazard and worked with me
5 and for me on this transaction.
6 Q. And would you identify Mr. Bruhmuller
7 as well.
8 A. Arthur is -- I believe Arthur is
9 either a VP or director at Lazard.
10 Q. Mr. Miller advised Judge Peck that
11 you, sir, were intimately involved in the
12 negotiations between Barclays and Lehman that
13 week of September 15th, correct?
14 A. Yes, although I was not in every
15 single meeting because there literally were
16 multiple meetings going on at the same time.
17 Q. Who was negotiating with Barclays on
18 behalf of Lehman, to your knowledge, during that
19 period?
20 MR. ROTHMAN: Objection to form.
21 MR. DAKIS: Same objection.
22 A. My recollection is that Mark
23 Schaeffer, Bart McDade, and that's my direct
24 knowledge. I'm sure there were other people
25 that were involved.
TSG Reporting - Worldwide 877-702-9580

Page 33

1 **Ridings**
2 can track our PL by assets category which gives
3 some indication of how much we have moved the
4 marks. We can also provide assets as of the
5 16th with marks so they can get some
6 prospective. Let me know what we need."
7 Do you see that?
8 A. Yes.
9 Q. That then is sent to Mr. Flores, as
10 we've noted, and he sends it on to your
11 colleague, Mr. Bruhmuller, who is asked, "What
12 are your thoughts on this?"
13 Do you see that?
14 A. Yes.
15 Q. And then Mr. Bruhmuller writes, "We
16 are trying to get a sense for how marks have
17 evolved since Friday. I think the first
18 priority would be to see the inventory of what's
19 being sold, how the marks have evolved and info
20 on the buyer discount."
21 Would a discount as set forth in this
22 exhibit change in any way your support for this
23 transaction on September 19th?
24 MR. CARDEN: Objection to form.
25 MR. DAKIS: Same objection.
TSG Reporting - Worldwide 877-702-9580

Page 34	Page 35
<p>1 Ridings</p> <p>2 A. My understanding was that there was</p> <p>3 not a built-in discount, but given the fact that</p> <p>4 we did not have a viable alternative, this --</p> <p>5 the rationale he sets is a reasonable rationale;</p> <p>6 that one would get a discount for a bulk</p> <p>7 purchase, but that was not my understanding of</p> <p>8 what the deal was.</p> <p>9 Q. If there had been a bulk purchase as</p> <p>10 you understand that expression, would that have</p> <p>11 concerned you in any way as of September 19th,</p> <p>12 2008?</p> <p>13 MR. CARDEN: Objection.</p> <p>14 MR. ROTHMAN: Objection to form.</p> <p>15 MR. DAKIS: Same objection.</p> <p>16 A. Could you just clarify what you mean</p> <p>17 by "concern"?</p> <p>18 Q. Would it have changed in any way your</p> <p>19 proffer to the court on September 19th?</p> <p>20 MR. ROTHMAN: Same objection.</p> <p>21 MR. CARDEN: Same objection.</p> <p>22 MR. DAKIS: Same objection.</p> <p>23 A. I don't think so. If you're telling</p> <p>24 me someone wants a 90 percent discount, yes,</p> <p>25 that doesn't make a lot of sense to me.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 If you're telling me someone wants a</p> <p>3 five or ten percent discount, that's not going</p> <p>4 to change my proffer to the court in terms of we</p> <p>5 still have the highest and best alternative and</p> <p>6 it's better than liquidation.</p> <p>7 Q. So if Lazard provided Barclays with a</p> <p>8 five percent or a ten percent discount in the</p> <p>9 transaction before the court on September 19th,</p> <p>10 that would not have changed your proffer to the</p> <p>11 court in favor of the sale.</p> <p>12 MR. DAKIS: Objection to form.</p> <p>13 MR. RAFFERTY: Jonathan, you mean if</p> <p>14 Lehman had provided? You said if</p> <p>15 Barclays --</p> <p>16 MR. SCHILLER: Let me rephrase the</p> <p>17 question.</p> <p>18 BY MR. SCHILLER:</p> <p>19 Q. If Barclays received a five or</p> <p>20 ten percent discount off of Lehman's marks at</p> <p>21 the time, that would not have changed your</p> <p>22 recommendation to the court to approve the sale,</p> <p>23 correct?</p> <p>24 MR. CARDEN: Objection.</p> <p>25 MR. ROTHMAN: Objection.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 36	Page 37
<p>1 Ridings</p> <p>2 MR. DAKIS: Join.</p> <p>3 A. Just a couple of comments. To answer</p> <p>4 your question, you need to put it in context of</p> <p>5 the week that we're in, the markets are</p> <p>6 extraordinarily volatile, things are changing</p> <p>7 literally by the minute and generally things</p> <p>8 were trending down, not up.</p> <p>9 There was continued disagreement</p> <p>10 between Barclays and Lehman as to what the</p> <p>11 appropriate marks were and if you're saying a</p> <p>12 five or ten percent discount off of the Lehman</p> <p>13 marks, which is what Barclays had always said,</p> <p>14 they didn't use percentages but they said your</p> <p>15 marks are stale and they're not reflective of</p> <p>16 what's happening in the market, the order of</p> <p>17 magnitude that you've just discussed with me,</p> <p>18 that would not change my opinion that this was</p> <p>19 better than liquidation and it's the highest and</p> <p>20 best and only alternative we had.</p> <p>21 Q. What order of magnitude would have</p> <p>22 affected you?</p> <p>23 MR. CARDEN: Objection to form.</p> <p>24 MR. DAKIS: Same objection.</p> <p>25 MR. ROTHMAN: Join in the objection.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 A. Let me try and describe it this way:</p> <p>3 What these securities were, some of them, were</p> <p>4 very illiquid securities, so if we go to some</p> <p>5 financial literature, for example, like Shannon</p> <p>6 Pratt, who's a well-known author who writes</p> <p>7 about valuing securities and illiquidity</p> <p>8 discounts, what he writes is that illiquidity</p> <p>9 discounts on securities, and that means</p> <p>10 securities that cannot readily be sold, averages</p> <p>11 35 to 40 percent.</p> <p>12 Now again, everything is fact</p> <p>13 specific but what you and I just discussed isn't</p> <p>14 close to -- I don't think it's close to 35 or</p> <p>15 40 percent, sort of illiquidity discount.</p> <p>16 Q. Did you have any understanding during</p> <p>17 this period September 15th to September 19th</p> <p>18 that any discount as discussed in the Reilly</p> <p>19 email was a secret that Lehman was to not share</p> <p>20 with anybody?</p> <p>21 MR. CARDEN: Objection to form.</p> <p>22 MR. ROTHMAN: Same objection.</p> <p>23 MR. DAKIS: Join in the objection.</p> <p>24 A. I'm sorry. Can you rephrase that?</p> <p>25 Q. Sure.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 38	Page 39
<p>1 Ridings</p> <p>2 A. The objections... I lost track.</p> <p>3 Q. The Reilly email which goes to Arthur</p> <p>4 and then to Descoteaux refers to a discount of</p> <p>5 some sort, does it not?</p> <p>6 A. I think it says a bulk market</p> <p>7 discount.</p> <p>8 Q. Did Lazard have any understanding</p> <p>9 that such a discount was a secret not to be</p> <p>10 shared outside of Lazard?</p> <p>11 MR. CARDEN: Objection to form.</p> <p>12 MR. DAKIS: Same objection.</p> <p>13 A. I have no knowledge of that.</p> <p>14 Q. At any point that week in the</p> <p>15 negotiations between Barclays and Lehman in</p> <p>16 which you participated, were there closed or</p> <p>17 secret discussions of any kind as far as you</p> <p>18 could tell?</p> <p>19 MR. CARDEN: Objection to form.</p> <p>20 MR. DAKIS: Same objection.</p> <p>21 A. There were no secret discussions. By</p> <p>22 closed, the door was closed. I'm not sure what</p> <p>23 you mean by closed.</p> <p>24 Q. Well, I think you've answered my</p> <p>25 question.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 A. I mean things that were discussed in</p> <p>3 the meetings, I reported back to the parties at</p> <p>4 Lehman and if appropriate, counsel.</p> <p>5 And generally I'm trying to think of</p> <p>6 a meeting that I was at where there was not a</p> <p>7 Lehman person with me and none -- the week kind</p> <p>8 of runs together, but I actually can't think of</p> <p>9 any meetings that I was in a room with Barclays</p> <p>10 without a Lehman person with me.</p> <p>11 Q. So as far as you recall, there was</p> <p>12 nothing secret about Barclays' assertion that</p> <p>13 the Lehman marks were stale and too high.</p> <p>14 MR. DAKIS: Objection to form.</p> <p>15 Mischaracterizes his testimony.</p> <p>16 A. They said that all the time. There's</p> <p>17 nothing secret about that.</p> <p>18 Q. Let me ask you to look at the next</p> <p>19 exhibit, Exhibit 20, which is a Lehman email</p> <p>20 dated September 16th from Mr. Tonucci to</p> <p>21 Mr. Lowitt.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And in this email chain below is an</p> <p>25 email from Mr. Kelly to Lowitt early in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 40	Page 41
<p>1 Ridings</p> <p>2 morning of September 16th --</p> <p>3 A. Yes.</p> <p>4 Q. -- saying, "Well, it took all night</p> <p>5 and lots of back and forth, but the deal was</p> <p>6 done and ready for the board. Final price did</p> <p>7 not change meaningfully. Approximately a</p> <p>8 \$5 billion all-in economic loss versus our marks</p> <p>9 and \$3.6 billion of residential assets left</p> <p>10 behind."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have an understanding whether</p> <p>14 the "\$5 billion all-in economic loss versus our</p> <p>15 marks" refers to the difference between what</p> <p>16 Barclays thought the assets were worth versus</p> <p>17 the Lehman marks?</p> <p>18 MR. CARDEN: Objection to form.</p> <p>19 MR. DAKIS: Objection to form.</p> <p>20 MR. ROTHMAN: Objection to form.</p> <p>21 A. I believe that's true, but again, I</p> <p>22 didn't write this and I'm not familiar with it.</p> <p>23 Q. Is this document and what it purports</p> <p>24 consistent with your understandings of the</p> <p>25 discussions between the parties that week?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 MR. CARDEN: Objection to form.</p> <p>3 MR. DAKIS: Objection to form.</p> <p>4 MR. ROTHMAN: Objection to form.</p> <p>5 A. It's not inconsistent. The</p> <p>6 discussion that week are the market was falling</p> <p>7 rapidly and the marks were not current and they</p> <p>8 were stale.</p> <p>9 But again, my understanding of the</p> <p>10 transaction is they were buying a business and</p> <p>11 in buying a business, they got assets and</p> <p>12 liabilities.</p> <p>13 Q. Is there anything inconsistent in</p> <p>14 this exhibit with your proffer in testimony</p> <p>15 before the court on September 19th in support of</p> <p>16 the sale?</p> <p>17 MR. ROTHMAN: Objection to the form.</p> <p>18 MR. CARDEN: Objection to the form.</p> <p>19 MR. DAKIS: Objection to the form.</p> <p>20 A. I don't think so.</p> <p>21 Q. Let me ask you to look at the next</p> <p>22 exhibit, Exhibit 21, sir, which is another</p> <p>23 internal email, this one dated September 18,</p> <p>24 2008 from Mr. Kirk to Mr. Reilly in response to</p> <p>25 a previous email from Reilly that is also set</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 42	Page 43
<p>1 Ridings 2 forth on page 9627. 3 Do you see that? 4 A. Yes. 5 Q. And in Mr. Reilly's email that begins 6 this particular chain on this page, there is a 7 reference to "open issues on the deal" and he 8 writes, "I need some help resolving these 9 issues." 10 And then at paragraph 3 Mr. Reilly 11 wrote, "Not clear on the amount of block 12 discount or how we make it happen. Defaulting 13 on repo could be the best as discount could be 14 taken from haircut. If not, then we need to 15 give business an allocation of block discount so 16 they can mark down the books tonight. Does that 17 create a problem as it could tip the broker 18 early? Would we rather have that be in the sale 19 price tomorrow?" 20 Do you see that? 21 A. Yes. 22 Q. Is there anything in Exhibit 21 that 23 is inconsistent with your support for the sale 24 on September 19, 2008? 25 MR. CARDEN: Objection to the form. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings 2 MR. DAKIS: Objection to the form. 3 MR. ROTHMAN: Objection to the form. 4 A. There are things in here I actually 5 don't understand. This is not a document I'm 6 familiar with, but I don't understand what he 7 says could create a problem as it could tip the 8 broker early. I just don't know what that 9 means. 10 And again, my understanding is that 11 this is essentially what we talked about. I 12 don't recall negotiations where people said I 13 want a block bulk sale discount. 14 But there's nothing here with those 15 provisos that would cause my testimony to the 16 court to be different. This was the only 17 alternative we had. It is better than 18 liquidation. 19 Q. By September 19, 2008, did you 20 determine that the transaction which had first 21 taken form on September 16th and 17 had been 22 completely restructured? 23 A. Yes. 24 Q. Can you describe that restructuring 25 generally? TSG Reporting - Worldwide 877-702-9580</p>
Page 44	Page 45
<p>1 Ridings 2 A. My understanding is that, and again, 3 this is top level, that Lehman had gone to the 4 Fed and pled certain securities and the Fed had 5 lent Lehman money, and the Fed said, for 6 whatever reasons; they said, This is not going 7 to work for us, Barclays. We essentially need 8 you to step into our shoes." So Barclays 9 stepped into the shoes of the Fed. 10 And so the securities that were 11 originally going to go to Barclays and the 12 original deal Lehman didn't have anymore, so 13 Barclays stepped into the shoes of the Fed and 14 the transaction was restructured around that. 15 Q. You mentioned securities that Lehman 16 did not have anymore. 17 Could you describe what you meant by 18 that? 19 A. Again, my general understanding, that 20 again, Lehman had to fund its business every 21 day. If it didn't have funding, it would have 22 to liquidate. And in order to get funding, they 23 would pledge securities with the Fed and they 24 would get overnight loans against that. And 25 without the liquidity, they couldn't open for TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings 2 business and we would have been in liquidation. 3 For whatever reason the Fed at some 4 point said, "This doesn't work for me where I'm 5 your bank, Barclays. If you're going to buy 6 this company, you're going to buy me out of my 7 position right now." 8 Again, this is generalization. I'm 9 sure there's a lot of legal specifics that I'm 10 glossing over. 11 Q. At that time of the discussions 12 concerning the Fed repo, do you know whether 13 counterparties had been seizing Lehman 14 securities that week? 15 A. My understanding is they had been. 16 The one that comes to mind is the commodity 17 exchange, but that's all I recall actually. 18 Q. So were there Lehman securities that 19 had been available to Barclays on September 16th 20 or 17th that were no longer available to Lehman 21 by the 18th and the 19th? 22 A. I think that's correct. 23 Q. Let me ask you to go back to 24 Exhibit 561A, which is a series of schedules and 25 balance sheets that I went over with you TSG Reporting - Worldwide 877-702-9580</p>

Page 46	Page 47
<p>1 Ridings</p> <p>2 earlier, and ask that you turn to the second to</p> <p>3 the last page, 4548, which has the word</p> <p>4 "Timeline" at the top.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know who prepared this</p> <p>8 document?</p> <p>9 A. I don't know who prepared it.</p> <p>10 I do know that it's not a Lazard</p> <p>11 template so we did not prepare it.</p> <p>12 Q. Did you understand that there was a</p> <p>13 Fed -- that there was a haircut in the Fed repo</p> <p>14 of approximately \$4.7 billion?</p> <p>15 A. I wouldn't characterize it that way.</p> <p>16 I would characterize it that when</p> <p>17 people go to the Fed to borrow money, the Fed</p> <p>18 does not lend you dollar for dollar. They're</p> <p>19 going to lend you less than the collateral that</p> <p>20 you give them.</p> <p>21 Q. And did you understand that the</p> <p>22 difference between what the Fed was loaning and</p> <p>23 the collateral it was pledged was approximately</p> <p>24 \$4.7 billion?</p> <p>25 A. I don't know the specifics, but I</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 that's order of magnitude correct.</p> <p>3 Q. And did you also understand that when</p> <p>4 Barclays stood in the shoes of Fed with respect</p> <p>5 to the repo, the ratio of the loan to the</p> <p>6 pledged collateral was consistent with that Fed</p> <p>7 ratio?</p> <p>8 MR. CARDEN: Objection to form.</p> <p>9 MR. DAKIS: Same objection.</p> <p>10 A. I'm not sure I know the answer to</p> <p>11 that question.</p> <p>12 Q. If you look at the exhibit I've</p> <p>13 placed in front of you where it provides under</p> <p>14 "Thursday," a reference to the "the Fed</p> <p>15 facility" and it's written, "Barclays wires \$45</p> <p>16 billion in cash to JPMorgan, expects to receive</p> <p>17 \$49.6 billion in securities," do you understand</p> <p>18 that to be a reference to the Fed repo we've</p> <p>19 been discussing in which Barclays stood in the</p> <p>20 Fed's shoes?</p> <p>21 A. I think that's correct.</p> <p>22 Q. I've seen an email in which you</p> <p>23 mentioned that during the day on Thursday you</p> <p>24 were talking to creditors, you were in a meeting</p> <p>25 with creditors.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 48	Page 49
<p>1 Ridings</p> <p>2 Do you recall meeting with creditors</p> <p>3 on Thursday?</p> <p>4 MR. CARDEN: Objection to form.</p> <p>5 MR. DAKIS: Same objection.</p> <p>6 A. My recollection is that we had a</p> <p>7 meeting at Weil, Gotshal on Thursday with some</p> <p>8 of the creditors.</p> <p>9 Q. Was there a discussion of this</p> <p>10 substantial change in the transaction in terms</p> <p>11 of the role of the Fed repo?</p> <p>12 A. I actually don't recall specifically.</p> <p>13 I would have thought it would have been</p> <p>14 discussed, but I don't recall.</p> <p>15 Q. Before Judge Peck, Harvey Miller</p> <p>16 proffered your testimony and when he did, he</p> <p>17 offered to the court your testimony that the</p> <p>18 negotiations between Lehman and Barclays that</p> <p>19 week were, quote, arm's length, difficult and</p> <p>20 aggressively negotiated by the parties.</p> <p>21 Was that accurate?</p> <p>22 A. Yes.</p> <p>23 Q. Mr. Miller also proffered as your</p> <p>24 testimony that the sales agreement between</p> <p>25 Lehman and Barclays that was before the court</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 was, quote, the result of good faith</p> <p>3 negotiations.</p> <p>4 Did you believe that at the time?</p> <p>5 A. Yes.</p> <p>6 Q. Based on everything that you know</p> <p>7 today, was this proffer of your testimony to the</p> <p>8 court on September 19th fair and accurate?</p> <p>9 A. I'm struggling with fair.</p> <p>10 It certainly was accurate and I</p> <p>11 attempted to be accurate, and I believe today I</p> <p>12 was accurate.</p> <p>13 Q. Have you become aware of anything</p> <p>14 since that hearing that has led you to believe</p> <p>15 that the information you received from Lehman</p> <p>16 was inaccurate in any way?</p> <p>17 A. I do not believe that Lehman gave me</p> <p>18 inaccurate information. They -- in an</p> <p>19 unbelievable stressful period, they gave us</p> <p>20 whatever information they had. Remember, things</p> <p>21 were changing by the second.</p> <p>22 Q. Do you have any reason to believe</p> <p>23 that those at Lehman who were dealing with</p> <p>24 Barclays that week were not acting in good</p> <p>25 faith?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 50	Page 51
<p>1 Ridings</p> <p>2 A. I have no reason to believe that to</p> <p>3 be the case.</p> <p>4 Q. Let me include in that question</p> <p>5 Mr. McDade, Mr. Tonucci, Mr. Kirk and</p> <p>6 Mr. Lowitt.</p> <p>7 Do you have any reason to believe any</p> <p>8 of them did not act in good faith in their</p> <p>9 dealings with Barclays leading up to</p> <p>10 September 19th?</p> <p>11 A. I think they all acted in good faith.</p> <p>12 I feel very comfortable in making</p> <p>13 that statement with respect to Bart, since I got</p> <p>14 to know him so well.</p> <p>15 And I would say for Ian, he's an</p> <p>16 officer of a company. He had fiduciary duties</p> <p>17 that he has.</p> <p>18 I believe it to be the case for the</p> <p>19 other two, although I had only met them one or</p> <p>20 two times.</p> <p>21 Q. Do you recall whether the contractual</p> <p>22 documentation between the parties required as a</p> <p>23 closing condition that a number of officers of</p> <p>24 Lehman go to Barclays?</p> <p>25 A. Yes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 Q. The individuals I've just named,</p> <p>3 McDade, Tonucci, Kirk, Lowitt, were they</p> <p>4 included in that conditions?</p> <p>5 MR. CARDEN: Objection to form.</p> <p>6 MR. DAKIS: Objection to form.</p> <p>7 A. I'm not sure about Kirk.</p> <p>8 Certainly the other three.</p> <p>9 Q. You may have answered this already</p> <p>10 but I want to be clear.</p> <p>11 Did you have an understanding from</p> <p>12 your interactions with these gentlemen that they</p> <p>13 knew they had a fiduciary duty to Lehman that</p> <p>14 week?</p> <p>15 A. I had no discussion on that point</p> <p>16 with Kirk or Tonucci, or Lowitt for that case,</p> <p>17 but Lowitt is an officer. I mean he has a</p> <p>18 fiduciary duty.</p> <p>19 With respect to Bart, I think it was</p> <p>20 clear that Bart knew he had to be the honest</p> <p>21 broker.</p> <p>22 Q. As a general matter, was it your</p> <p>23 understanding that week that Lehman's financial</p> <p>24 inventory was uncertain and changing constantly?</p> <p>25 MR. CARDEN: Objection to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 52	Page 53
<p>1 Ridings</p> <p>2 A. I'm going to ask you to clarify</p> <p>3 "uncertain."</p> <p>4 Q. Let me ask only about the value of</p> <p>5 the Lehman inventory. You've talked previously</p> <p>6 about the downward pressures, the tumultuous</p> <p>7 market conditions.</p> <p>8 Let me ask you whether you understood</p> <p>9 that the value of Lazard's financial inventory</p> <p>10 was uncertain.</p> <p>11 A. Of Lehman.</p> <p>12 Q. Lehman's financial inventory.</p> <p>13 A. We have no financial inventory.</p> <p>14 Q. Let me start again.</p> <p>15 During that week of September 15th</p> <p>16 through September 19th, was it your view that</p> <p>17 the value of Lehman's financial inventory was</p> <p>18 uncertain and changing constantly?</p> <p>19 MR. CARDEN: Objection to form.</p> <p>20 MR. DAKIS: Objection.</p> <p>21 MR. ROTHMAN: Objection to form.</p> <p>22 A. It was certainly changing constantly,</p> <p>23 you know, by the hour and the markets were under</p> <p>24 incredible stress and the general trend of that</p> <p>25 during the week was downward.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 Q. In your proffer to Judge Peck, you</p> <p>3 are quoted as stating, "The sale of LBI must be</p> <p>4 immediately consummated or there will be little</p> <p>5 or nothing left to sell."</p> <p>6 Is that accurate?</p> <p>7 A. I think that's what he said, yes. I</p> <p>8 think he said about what I would say, yes.</p> <p>9 Q. And you agree with that proffer.</p> <p>10 A. Yes.</p> <p>11 Q. Let me ask you a couple more</p> <p>12 questions about Exhibit 561A, which I have --</p> <p>13 which you have before you.</p> <p>14 I'm going to ask you to turn to page</p> <p>15 4545, which is another balance sheet.</p> <p>16 When you were in court with</p> <p>17 Mr. Miller on September 19th, do you recall his</p> <p>18 statement to Judge Peck that there would be</p> <p>19 "\$2 billion of exposure to transfer employees"</p> <p>20 for Barclays?</p> <p>21 A. I think that's generally correct.</p> <p>22 Q. And as regards cure payments, do you</p> <p>23 recall that Mr. Miller said to the court that</p> <p>24 there was \$1.2 billion potential exposure to</p> <p>25 Barclays for contracts and leases that Barclays</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 54

1 **Ridings**
2 **may assume?**
3 MR. CARDEN: Objection to the form.
4 MR. DAKIS: Objection to the form.
5 MR. ROTHMAN: Objection to the form.
6 A. I think that's what he said, yes.
7 **Q. Did you have an understanding that**
8 **these were rough Lehman estimates that**
9 **Mr. Miller was describing?**
10 MR. CARDEN: Objection to form.
11 MR. DAKIS: Same objection.
12 MR. ROTHMAN: Objection.
13 A. Yes. I don't think there was any
14 specific number for all the employees. The year
15 hadn't been finished yet, so that was an
16 estimate of what -- it was an upward estimate.
17 If they were going to keep the employees, they
18 were going to have to pay them to keep them.
19 The other one, my understanding is it
20 was an estimate and actually the number had
21 started out higher and had come down. It was an
22 estimate.
23 **Q. And in terms of a compensation, would**
24 **those payments be contingent upon how many**
25 **people actually transferred to Barclays?**
TSG Reporting - Worldwide 877-702-9580

Page 56

1 **Ridings**
2 A. Well, with respect to those two line
3 items we've been talking about, it does not
4 change my proffer.
5 We'd have to talk about the other
6 line items otherwise.
7 MR. SCHILLER: Okay. Why don't we
8 take a short break and I'll just have a
9 little bit more.
10 THE VIDEOGRAPHER: The time is 10:16
11 a.m. We're going off the record.
12 (Recess is taken.)
13 THE VIDEOGRAPHER: The time is 10:39
14 a.m. We're back on the record, video
15 No. 2.
16 BY MR. SCHILLER:
17 **Q. Mr. Ridings, let me ask you to look**
18 **at the last exhibit that I've put in your pile,**
19 **564A.**
20 A. Yes.
21 **Q. And this is a Lazard -- an Alvarez &**
22 **Marsal presentation to the Creditors Committee**
23 **that was sent to David Descoteaux and copy to**
24 **you on October 8, 2008, correct?**
25 A. Yes.
TSG Reporting - Worldwide 877-702-9580

Page 55

1 **Ridings**
2 MR. CARDEN: Objection to form.
3 MR. ROTHMAN: Same objection.
4 MR. DAKIS: Same objection.
5 A. That's certainly one of the factors,
6 yes, and you can't force people to work for
7 Barclays.
8 **Q. So at the page I mentioned earlier,**
9 **4545 of 561A, on the left side of the balance**
10 **sheet there are accrued amounts for payables,**
11 **including compensation and trade liabilities.**
12 **Do you see that?**
13 A. Yes.
14 **Q. And those accruals there as adjusted**
15 **are less than the numbers that Mr. Miller gave**
16 **the court Friday night, correct?**
17 MR. CARDEN: Objection to form.
18 A. Correct.
19 **Q. Is there any information on page 4545**
20 **that is inconsistent with your proffer in**
21 **testimony in support of the sale on**
22 **September 19th?**
23 MR. CARDEN: The whole page?
24 Objection to form.
25 MR. DAKIS: Same objection.
TSG Reporting - Worldwide 877-702-9580

Page 57

1 **Ridings**
2 MR. CARDEN: Objection to the form.
3 MR. DAKIS: Same objection.
4 BY MR. SCHILLER:
5 **Q. And may I ask you to turn to the next**
6 **to last page, 63753, please, where Alvarez &**
7 **Marsal make reference to the, quote, sale of**
8 **Lehman Brothers to Barclays.**
9 **Do you see that?**
10 A. Let me make sure we're on the same
11 page. That was kind of the middle of my deck,
12 so it's page 28 on the bottom left?
13 **Q. Yes, sir.**
14 A. Okay. Thank you.
15 **Q. You made mention earlier in your**
16 **testimony to Lehman stale marks.**
17 **Do you recall that?**
18 A. Yes.
19 **Q. Let me point you to the first bullet**
20 **under "Assets Purchased," which reads,**
21 **"43.1 billion Repo Assets. Book value per**
22 **Lehman stale marks; negotiated a \$5. billion**
23 **reduction."**
24 **Do you see that?**
25 A. Yes.
TSG Reporting - Worldwide 877-702-9580

Page 58

1 Ridings
2 **Q.** If this \$5 billion reduction is what
3 **Mr. Reilly** meant in his email that we've looked
4 at concerning bulk discount or block discount,
5 then this was information known to Lazard,
6 correct?
7 **MR. CARDEN:** Objection.
8 **MR. DAKIS:** Objection to form.
9 **MR. ROTHMAN:** Objection.
10 **A.** Can you restate that, please.
11 **Q.** Sure.
12 We looked at **Mr. Reilly's** email that
13 **Mr. Descoteaux** and **Arthur** received.
14 **A.** Yes.
15 **Q.** And he made reference to a bulk
16 discount there.
17 Do you recall that?
18 **A.** He had a reference to, yes.
19 **Q.** And you've also testified to Lazard's
20 knowledge of the negotiation between Barclays
21 and Lehman over Lehman's stale marks, correct?
22 **A.** Yes.
23 **Q.** And if the reference by Reilly to a
24 discount was a reference to a negotiated
25 \$5 billion reduction as written by Alvarez &
 TSG Reporting - Worldwide 877-702-9580

Page 60

1 Ridings
2 **\$68.400 million, correct?**
3 **MR. CARDEN:** Objection to form.
4 **MR. DAKIS:** Same objection.
5 **A.** There is a difference, yes.
6 **Q.** And if that is what Reilly meant when
7 he referenced discount, this was also a
8 difference known to Lazard as of September 16th,
9 correct?
10 **MR. CARDEN:** Objection to form.
11 **MR. DAKIS:** Objection to the form.
12 **MR. ROTHMAN:** Objection to the form.
13 **A.** Again, I don't know what Reilly
14 meant. I had seen this schedule, it came out of
15 our files and I obviously know what the schedule
16 says, and there is a difference between total
17 adjusted assets and total liabilities.
18 **Q.** And what is that difference, roughly?
19 **A.** It's about \$4 billion.
20 **Q.** Let me ask you to look at the first
21 exhibit again, the APA, and return again to page
22 6, the definition of "Purchased Assets,"
23 **Mr. Ridings**, please.
24 **A.** Yes.
25 **Q.** And you see at subparagraph D there
 TSG Reporting - Worldwide 877-702-9580

Page 59

1 Ridings
2 **Marsal** here, then that was something that Lazard
3 had knowledge of, correct?
4 **MR. DAKIS:** Objection to the form.
5 **MR. ROTHMAN:** Objection to the form.
6 **A.** Again, my knowledge is I don't recall
7 any discussions where people talked about bulk
8 discounts in the negotiation.
9 I do recall that Barclays
10 consistently said the marks are not current.
11 What this says, I don't know if it's
12 related to what Reilly said at all, but Barclays
13 clearly thought the assets they were getting
14 were not worth what Lehman had them on their
15 books for.
16 And again, remember, they bought a
17 business and the business was conveyed by some
18 assets. This page clearly doesn't list all the
19 things, the gives and takes of the business.
20 This only has a couple of them.
21 **Q.** I direct your attention back to
22 Exhibit 561A for a moment, and on the second
23 page, 4544, on the balance sheet, there is a
24 spread between the estimated long positions of
25 \$72,650,000,000 and the short positions of
 TSG Reporting - Worldwide 877-702-9580

Page 61

1 Ridings
2 is a reference to government securities,
3 commercial paper, corporate debt, corporate
4 equity exchange, traded derivatives and
5 collateralized short-term agreements with a book
6 value as of the date here of approximately \$70
7 billion long positions?
8 **A.** Yes.
9 **Q.** Do you recall when you were in court
10 on September 19th that one of Weil, Gotshal's
11 partners, Lori Fife, explained to the court that
12 Lehman was originally selling long positions of
13 approximately \$70 billion, but today,
14 September 19th, was selling assets with a value
15 of \$47.4 billion.
16 Do you remember that?
17 **A.** I think that's what she said, yes.
18 **Q.** Do you know how that \$47.4 billion
19 number was derived?
20 **A.** I'm not sure how it was derived.
21 **Q.** And if you look at the purchased
22 assets as defined here, there were a number of
23 assets purchased by Barclays in addition to the
24 long positions, correct?
25 **MR. CARDEN:** Objection to form.
 TSG Reporting - Worldwide 877-702-9580

Page 62	Page 63
<p>1 Ridings</p> <p>2 MR. DAKIS: Same objection.</p> <p>3 A. If you're asking did they buy more</p> <p>4 than what is in paragraph D, the answer is yes.</p> <p>5 There are lots of letters here, co-signs for</p> <p>6 3 pages, what they bought.</p> <p>7 Q. And did those other categories that</p> <p>8 you're looking at there, including the</p> <p>9 intangibles, furniture and equipment, the</p> <p>10 residential real estate, mortgages, provide</p> <p>11 potentially substantial but unquantified values</p> <p>12 to Barclays?</p> <p>13 MR. ROTHMAN: Objection to form.</p> <p>14 MR. DAKIS: Same objection.</p> <p>15 A. I'm not sure I understand the</p> <p>16 question.</p> <p>17 Q. In addition to the \$70 billion long,</p> <p>18 these other assets listed there are not</p> <p>19 quantified, but they provide substantial but</p> <p>20 unquantified value in the sale, don't they?</p> <p>21 MR. DAKIS: Objection to form.</p> <p>22 MR. ROTHMAN: Same objection.</p> <p>23 A. Let me see if I can understand.</p> <p>24 Again, I think Barclays bought a</p> <p>25 business and the form of the transaction is</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 identified in assets and there's a laundry list</p> <p>3 of running up to letter S of the various things</p> <p>4 they bought. And again, some of these include</p> <p>5 goodwill and software and things of that like,</p> <p>6 and then you also have people. I mean that's</p> <p>7 not -- you can't convey people but that's</p> <p>8 something else that Barclays got.</p> <p>9 So I think that's the answer. I mean</p> <p>10 the only number here I think is the approximate</p> <p>11 number of \$70 billion for subsection D.</p> <p>12 Q. When you appeared before the court on</p> <p>13 September 19th, did you have any certainty as to</p> <p>14 the value of all purchased assets that were to</p> <p>15 be conveyed to Barclays?</p> <p>16 MR. CARDEN: Objection to form.</p> <p>17 MR. ROTHMAN: Objection to form.</p> <p>18 A. By "certainty" you mean did I know</p> <p>19 exactly what they were worth that day.</p> <p>20 Q. Let me ask it again.</p> <p>21 Did you have any understanding when</p> <p>22 you testified before the court on September</p> <p>23 19th, what the value that day was of the assets,</p> <p>24 all the purchased assets that were to be</p> <p>25 conveyed to Barclays?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 64	Page 65
<p>1 Ridings</p> <p>2 A. If you recall, the hearing went till</p> <p>3 sometime Saturday morning. No one in the</p> <p>4 courtroom had closing marks for Friday during</p> <p>5 the hearing, so I think the answer is I didn't</p> <p>6 know with certainty what the dollar number was</p> <p>7 of the assets conveyed.</p> <p>8 Q. And is it also your testimony that in</p> <p>9 your view no one could have known?</p> <p>10 MR. ROTHMAN: Objection to form.</p> <p>11 MR. DAKIS: Same objection.</p> <p>12 A. Again, we were selling a business.</p> <p>13 They were buying a business and they agreed to</p> <p>14 assume certain liabilities and they paid a</p> <p>15 certain amount of cash. They were taking --</p> <p>16 they were getting these assets.</p> <p>17 Once they owned it, it was their</p> <p>18 risk. When the markets opened Monday, the</p> <p>19 markets could have gone up or down and that was</p> <p>20 their risk. I guess it's really Tuesday.</p> <p>21 Whenever the deal closed.</p> <p>22 But at 1:00 a.m. Saturday morning, I</p> <p>23 don't think any of us had a piece of paper that</p> <p>24 said the closing marks on these securities are</p> <p>25 X. And even if there were, those were the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 Ridings</p> <p>2 Lehman numbers. Those may or may not be what</p> <p>3 Barclays thought they were worth.</p> <p>4 Q. So you didn't rely on any precise</p> <p>5 valuation of assets and liabilities when you</p> <p>6 recommended approval of the sale to the court on</p> <p>7 September 19th.</p> <p>8 MR. CARDEN: Objection to form.</p> <p>9 MR. DAKIS: Same objection.</p> <p>10 A. Again, my testimony was that it was</p> <p>11 the highest and best alternative that we had,</p> <p>12 and the alternative was liquidation. I was</p> <p>13 confident and remain confident that this</p> <p>14 transaction was better than a liquidation would</p> <p>15 have been.</p> <p>16 Q. Earlier in your testimony you made</p> <p>17 reference to consequences of any loss on the</p> <p>18 part of Barclays as a result of its purchase of</p> <p>19 this business.</p> <p>20 Can you describe for me what you</p> <p>21 meant in your response earlier?</p> <p>22 A. Sure.</p> <p>23 That didn't go into the consideration</p> <p>24 of whether I thought this was a good or bad</p> <p>25 deal. Barclays was taking a risk.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

Page 66

1 Ridings
2 I was making a comment kind of as a
3 U.S. citizen. If Barclays had expended this
4 money and the capital markets continued to fall,
5 there was a chance Barclays would then
6 subsequently fail, which would have meant that
7 Goldman, Morgan Stanley, the list goes on and on
8 of firms that may fail. It -- literally we were
9 talking about the end of the capital markets as
10 we knew them that week. It was that bad.
11 A year-and-a-half later you may say
12 uh, you're overreacting, but I've done this for
13 35 years. I can't stress to you the
14 unbelievable nature of that week.
15 So Barclays took a huge risk and if
16 this transaction failed for Barclays, it was a
17 bet the ranch transaction for Barclays.
18 But that had nothing to do with my
19 opinion as to whether this was the best price
20 and deal for Lehman.
21 Q. And it was your opinion that it was,
22 correct?
23 A. What I said in my proffer and on the
24 stand, this was the highest and best that we had
25 and it was clearly better than liquidation.
TSG Reporting - Worldwide 877-702-9580

Page 68

1
2 CERTIFICATE
3
4 STATE OF NEW YORK)
5) ss.:
6 COUNTY OF QUEENS)
7
8 I, ANNETTE ARLEQUIN, a Notary Public
9 within and for the State of New York, do
10 hereby certify:
11 That BARRY W. RIDINGS, the witness
12 whose deposition is hereinbefore set forth,
13 was duly sworn by me and that such
14 deposition is a true record of the
15 testimony given by such witness.
16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage; and that I am
19 in no way interested in the outcome of this
20 matter.
21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 15th day of January, 2010.
23
24
25 ANNETTE ARLEQUIN, CCR, RPR
TSG Reporting - Worldwide 877-702-9580

Page 67

1 Ridings
2 MR. SCHILLER: Thank you,
3 Mr. Ridings.
4 MR. CARDEN: Take a break? Take a
5 short break.
6 MR. SCHILLER: Sure.
7 THE VIDEOGRAPHER: The time is 10:55
8 a.m. We're going off the record.
9 (Recess is taken.)
10 MR. CARDEN: We don't have any
11 questions.
12 (Time noted: 10:57 a.m.)
13
14
15
16 BARRY W. RIDINGS
17
18
19 Subscribed and sworn to before me
20 this day of 2010.
21
22
23
24
25
TSG Reporting - Worldwide 877-702-9580

Page 69

1
2 INDEX
3
4 witness Page
5 BARRY W. RIDINGS
6 MR. SCHILLER 7
7
8 INDEX OF EXHIBITS
9 Description Page
10
11 Deposition Exhibit 561A, Document Bates 6
12 stamped LAZ-A-00004543 through 4549
13
14 Deposition Exhibit 562A, Email dated 6
15 9/18/08 from Creswell to Distribution
16 at Lazard NYC, Bates stamped
17 LAZ-C-00049033 to 49041,
18
19 Deposition Exhibit 563A, Email dated 6
20 9/18/08 from Descoteaux to Ridings,
21 Bates stamped LAZ-C-00049400 through
22 49405
23
24 Deposition Exhibit 564A, Email dated 6
25 10/8/08 from Descoteaux to Ridings and
Whiting with attachment, Bates stamped
LAZ-C-00063724 through 63817
TSG Reporting - Worldwide 877-702-9580

Page 70

ERRATA SHEET FOR THE TRANSCRIPT OF:
CASE NAME: LEHMAN BROTHERS HOLDINGS, INC.
DATE: JANUARY 15, 2010
DEPONENT: BARRY W. RIDINGS

Pg.	Ln.	Now Reads	Should Read	Reason
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8	---	-----	-----	-----
9	---	-----	-----	-----
10	---	-----	-----	-----
11	---	-----	-----	-----
12	---	-----	-----	-----
13	---	-----	-----	-----
14	---	-----	-----	-----
15	---	-----	-----	-----
16	---	-----	-----	-----

BARRY W. RIDINGS
SUBSCRIBED AND SWORN BEFORE ME
THIS ____ DAY OF _____ 2010.

(Notary Public)

MY COMMISSION EXPIRES: _____

TSG Reporting - Worldwide 877-702-9580

BCI EXHIBIT

93

HIGHLY CONFIDENTIAL - J. RODEFELD
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF JOHN RODEFELD

New York, New York

August 27, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24294

Page 2	Page 3
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 August 27, 2009 3 9:33 a.m.</p> <p>4 HIGHLY CONFIDENTIAL deposition 5 of JOHN RODEFELD, held at Jones Day 6 LLP, 222 East 41st Street, New 7 York, New York, before Kathy S. 8 Klepfer, a Registered Professional 9 Reporter, Registered Merit Reporter, 10 Certified Realtime Reporter, Certified 11 Livenote Reporter, and Notary Public 12 of the State of New York.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 </p> <p>3 A P P E A R A N C E S:</p> <p>4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: JAYANT W. TAMBE, ESQ. 9 BRIDGET CRAWFORD, ESQ.</p> <p>10 </p> <p>11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays and the Witness 13 5301 Wisconsin Avenue, N.W. 14 Washington, D.C. 20015 15 BY: JONATHAN M. SHAW, ESQ.</p> <p>16 </p> <p>17 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 18 Attorneys for the Creditors Committee 19 865 South Figueroa Street, 10th Floor 20 Los Angeles, California 90017 21 BY: THOMAS O'BRIEN, ESQ. (By telephone)</p>
Page 4	Page 5
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 A P P E A R A N C E S: (Cont'd.)</p> <p>3 </p> <p>4 JENNER & BLOCK, LLP 5 Attorneys for the Examiner 6 330 N. Wabash Avenue 7 Chicago, Illinois 60611-7603 8 BY: DAVID C. LAYDEN, ESQ.</p> <p>9 </p> <p>10 HUGHES, HUBBARD & REED, LLP 11 Attorneys for the SIPA Trustee 12 One Battery Park Plaza 13 New York, New York 10004-1482 14 BY: SETH D. ROTHMAN, ESQ. 15 FARA TABATABAI, ESQ.</p> <p>16 </p> <p>17 </p> <p>18 Also Present: 19 RAJESH ANKALKOTI, Alvarez & Marsal</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 JOHN RODEFELD, called as a 3 witness, having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows:</p> <p>6 EXAMINATION BY 7 MR. TAMBE:</p> <p>8 Q. Good morning, Mr. Rodefeld. My name 9 is Jay Tambe. I'm with the law firm of Jones 10 Day. We're special counsel to the estate of 11 Lehman Brothers Holdings, Inc. With me is 12 Bridget Crawford.</p> <p>13 I'm going to have the other counsel 14 around the table introduce themselves to you and 15 then we'll get started.</p> <p>16 MS. TABATABAI: I'm Fara Tabatabai 17 with Hughes Hubbard. We represent the SIPA 18 Trustee.</p> <p>19 MR. ROTHMAN: Seth Rothman from Hughes 20 Hubbard, also for SIPA Trustee.</p> <p>21 MR. LAYDEN: David Layden from Jenner 22 & Block on behalf the Examiner.</p> <p>23 MR. ANKALKOTI: Rajesh Ankalkoti from 24 Alvarez & Marsal on behalf of the estate.</p> <p>25 MR. SHAW: Jonathan Shaw of Boies,</p>

Page 6	Page 7
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 Schiller & Flexner on behalf of Barclays. 3 MR. TAMBE: And we have counsel on the 4 phone as well? 5 MR. O'BRIEN: This is Tom O'Brien at 6 Quinn Emanuel in Los Angeles on behalf of 7 the Creditors Committee. 8 BY MR. TAMBE: 9 Q. Mr. Rodefeld, I'm going to ask you 10 some questions about the Lehman/Barclays 11 transaction and what role, if any, you may have 12 played in connection with that transaction. And 13 the time period I'm going to be focused on is 14 really sort of September 2008, and to the extent 15 you had an involvement after September 2008, 16 we'll ask you some questions about that. Okay? 17 A. Fine. 18 Q. You're employed by Barclays Capital 19 now? 20 A. That's correct. 21 Q. How long have you been at Barclays 22 Capital? 23 A. Since January 1999. Ten and a half 24 years. 25 Q. And prior to Barclays Capital, by whom</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 were you employed? 3 A. Salomon Brothers, Inc. 4 Q. And how long had you been at Salomon? 5 A. 16-plus years. 6 Q. Starting in January '99 to the 7 present, if you could just give us a brief 8 overview of your career at Barclays Capital, 9 what departments, positions, et cetera. 10 A. Okay. I was hired out of the UK. I 11 was an expat at Salomon Brothers. Came over 12 back to the U.S. as a senior operations manager, 13 various line management responsibilities over a 14 number of different functional areas, through 15 the years taking on more responsibilities. 16 I believe it was in early, mid 2007 17 when I took over all of U.S. operations, which I 18 managed until the Lehman integration, at which 19 point I was -- I took on more global 20 responsibilities and various line management 21 responsibilities in the U.S. 22 Q. And what's your current title and 23 position at Barclays? 24 A. I'm a managing director in charge of 25 various operations, global and regional.</p>
Page 8	Page 9
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 Q. Within sort of the various divisions 3 or working groups at Barclays Capital, is there 4 a particular group that you head up? 5 A. There's a number of groups I head up. 6 Q. If you could describe those? 7 A. On a global basis, I'm responsible for 8 all the global reference data, which is all the 9 accounts and the instrument. 10 Q. Okay. 11 A. Globally, I'm also responsible for the 12 collateral -- within those groups, there's a 13 couple hundred, 300 people or so -- mostly 14 responsible globally for the Collateral 15 Management Unit. Regionally, I'm responsible or 16 mostly responsible for the Mexico and the Brazil 17 offices of operations, and then locally here in 18 the U.S. I'm responsible for all the OTC 19 derivative operations, emerging market 20 operations, commodities, securitized products, 21 and some other various aspects. 22 Q. Is it fair to say that throughout your 23 tenure at Barclays Capital you have been 24 involved in managing operations? The scope of 25 the operations you manage may have changed, but</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD 2 you effectively have been managing operations in 3 one form or the other? 4 A. That's correct. That's for my whole 5 career. 6 Q. And if you could give us a description 7 of what it means to manage operations, what's 8 included in that? 9 A. Making sure that all the aspects of 10 confirmations, settlements, reconciliations, 11 balancing, general ledger reconciliation and so 12 forth, anything post-trade. 13 Q. And does your job encompass making 14 sure there are systems in place to make sure 15 those things happen, but are you also checking 16 the actual results of those operations? 17 Do you understand the question? 18 A. I think so. 19 Q. Okay. 20 A. My job is to manage people that manage 21 most of the line functions. I do look at some 22 of the MIS that's produced out of those 23 functional areas to make sure that, you know, 24 anything that looks out of place, I might review 25 it and discuss it with them. But by and large,</p>

Page 10	Page 11
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 I have a number of senior managers that run the</p> <p>3 day-to-day operations, whether it's the</p> <p>4 technology or the processing.</p> <p>5 Q. Okay. I'm going to ask my question in</p> <p>6 a slightly different way. Let's just take an</p> <p>7 example of a particular commodity trade. A</p> <p>8 trade is placed on some exchange. Operations</p> <p>9 would include making sure you have the right</p> <p>10 procedures in place to make that trade, book</p> <p>11 that trade, record that trade in the systems of</p> <p>12 Barclays?</p> <p>13 A. Well, we don't make the trade.</p> <p>14 Q. So the traders will make the trade?</p> <p>15 A. Traders make the trade. Sellers sell</p> <p>16 the trade. We process the trade.</p> <p>17 Q. Once the trade is processed and the</p> <p>18 operations folks who work for you and report to</p> <p>19 you make sure it gets reported and recorded in</p> <p>20 the right place, is that part of what they would</p> <p>21 do?</p> <p>22 A. Yes, and reconcile.</p> <p>23 Q. Would they also be asked to look at</p> <p>24 the valuation of that trade, or does the price</p> <p>25 sort of just move with the transaction, you</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 record the transaction and the price that's</p> <p>3 reported by the trader?</p> <p>4 A. The price is established by the</p> <p>5 trader. We don't get involved in the valuations</p> <p>6 or the, you know, whether the price is traded</p> <p>7 correctly or incorrectly.</p> <p>8 Q. Okay. All right. In describing your</p> <p>9 tenure at Barclays, you said you headed up all</p> <p>10 of U.S. operations at Barclays Capital until the</p> <p>11 Lehman integration?</p> <p>12 A. Right.</p> <p>13 Q. What point in time more specifically</p> <p>14 would you say the Lehman integration occurred?</p> <p>15 A. Well, it started pretty much</p> <p>16 immediately.</p> <p>17 Q. Okay.</p> <p>18 A. So there was probably a period from</p> <p>19 September through November/December when we</p> <p>20 formally came out with a new org. structure, you</p> <p>21 know, to the new, keeping the global head and</p> <p>22 then redefining the regional responsibilities</p> <p>23 here in the U.S.</p> <p>24 Q. And so was it then in November or</p> <p>25 December that you took on your more expanded and</p>
Page 12	Page 13
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 different role?</p> <p>3 A. Yes, but I had the collateral</p> <p>4 management responsibilities globally prior to</p> <p>5 that. So, as part of my global -- the U.S.</p> <p>6 operations head, plus the Global Collateral</p> <p>7 Management Team was prior to the Lehman</p> <p>8 integration.</p> <p>9 Q. There's a particular week in September</p> <p>10 I'm going to ask you to sort of focus on, and</p> <p>11 maybe it's ten days, starting roughly the</p> <p>12 12th -- the 13th of September, which is a</p> <p>13 Saturday, through the 22nd of September, which</p> <p>14 is the following Monday.</p> <p>15 A. Uh-huh.</p> <p>16 Q. That's the week in which a lot of</p> <p>17 things happened concerning the Lehman/Barclays</p> <p>18 transaction.</p> <p>19 What were you doing during that week,</p> <p>20 just broadly, and then we'll narrow down into</p> <p>21 specific things?</p> <p>22 A. From that Saturday on, at that point,</p> <p>23 the Friday there was -- Friday evening, we were</p> <p>24 made aware that there was a potential to look at</p> <p>25 Lehman, some type of acquisition. So it</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 actually starts on Friday, Friday evening at</p> <p>3 probably around 6 o'clock in the evening. And</p> <p>4 the reason I say that is only because that leads</p> <p>5 us into the Saturday.</p> <p>6 So Friday we actually had to do -- we</p> <p>7 went over to Simpson Thacher, did some</p> <p>8 high-level introductions with the Lehman folks,</p> <p>9 understood their organization in terms of</p> <p>10 management structure, people, locations, things</p> <p>11 of that nature, just to get our arms around</p> <p>12 potentially what we would have to deal with</p> <p>13 going forward.</p> <p>14 So the Saturday and Sunday was just</p> <p>15 reviewing, looking at the organization, and</p> <p>16 opening up that dialogue.</p> <p>17 Q. On the --</p> <p>18 A. And starting to think about planning</p> <p>19 on that Saturday and Sunday what we would have</p> <p>20 to do if we in fact would go through with this.</p> <p>21 Q. The Friday meeting at Simpson Thacher,</p> <p>22 who went over from Barclays to that meeting?</p> <p>23 A. It was myself -- I was instructed to</p> <p>24 bring a couple of senior managers over. I don't</p> <p>25 remember all. I do remember it being a</p>

Page 14

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 gentleman named John Clifford, Kim Wolfe, Lucy
3 Dorr, and there may have been one or two more
4 people. I just don't recall the names. I just
5 don't recall. I'm sure it's available.
6 **Q. And this meeting that you are**
7 **describing at Simpson, was this a meeting**
8 **focused on operational issues?**
9 A. Yes. Yes.
10 **Q. And was it your understanding that**
11 **there were other meetings taking place between**
12 **Barclays and Lehman folks on business and other**
13 **terms?**
14 A. They may have. I wasn't privy to
15 those. I just went into the Simpson offices and
16 was directed to an office where we did a
17 conference call with the Lehman senior
18 management on the ops. side.
19 **Q. And then the folks from Lehman that**
20 **you were speaking with, those were generally**
21 **your counterparts at Lehman?**
22 A. That's correct.
23 **Q. Saturday and Sunday, if you could just**
24 **describe with some more detail the kinds of**
25 **things you were doing on Saturday and Sunday.**

Page 16

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **point.**
3 A. Back in September, everybody in the
4 U.S. reported to me.
5 I'm sorry, what was the rest of the
6 question?
7 **Q. And who did you report to?**
8 A. I reported to, on a global basis, a
9 woman named Carole Machell, who is the global
10 head of operations.
11 **Q. And when you said everyone in the U.S.**
12 **reported to you, again, you're talking about the**
13 **operations people in the U.S., correct?**
14 A. That's correct.
15 **Q. And how many people was that back in**
16 **September of 2008?**
17 A. 400 maybe.
18 **Q. How many of them were direct reports**
19 **to you?**
20 A. There is direct and indirect. There
21 is direct a number -- indirect only because we
22 have a matrix management. We have global
23 management and we have local management based on
24 a product or functional area. So locally
25 everybody reported to me on a dotted line or a

Page 15

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 A. Nothing specific other than starting
3 to think about the, you know, if in fact we
4 started to integrate, you know, understanding
5 their products versus our product mix and, you
6 know, thinking about the systems, thinking about
7 if we had to hit the ground running quickly,
8 what we would do. It was more informal
9 discussions about it rather than putting a
10 project plan together.
11 Because things weren't -- we weren't
12 on solid ground at that point. What we were
13 doing, I think we were just spending time having
14 discussions about aspects of what we would do,
15 just colleagues in operations. It was more, I
16 think it was more informal.
17 **Q. You described some of the folks that**
18 **had gone over with you to Simpson. If you could**
19 **just help me understand a little bit better**
20 **about your immediate sort of reporting lines.**
21 **Who do you report to? Who reports to you,**
22 **direct reports to you?**
23 MR. SHAW: You mean today or back then
24 in September?
25 **Q. Back then in September of 2008. Good**

Page 17

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **hard line, depending, and some people had hard**
3 **lines into the UK operations management.**
4 So locally they would report to me.
5 Globally, they might report to somebody else,
6 but dotted line in to me. So, theoretically, at
7 some point everybody comes in to me, either a
8 dotted or a hard line.
9 **Q. I imagine on a daily basis you don't**
10 **have 400 people constantly in contact with you.**
11 **There's probably a handful of people that you're**
12 **dealing with on a day-to-day basis more so than**
13 **others, is that fair?**
14 A. Correct.
15 **Q. Who are the main people you were**
16 **dealing with on a day-to-day basis?**
17 A. On a day-to-day basis, it would be a
18 woman named Kim Wolfe, Lucy Dorr, John Clifford,
19 a gentleman named Jason Pietruski. I believe
20 those would be probably the four people on a
21 senior level on a regular basis. I could be
22 leaving somebody out, but those are the ones I
23 can think about from that period.
24 **Q. Okay. And are there different areas**
25 **of particular areas of responsibility for these**

Page 18

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **four individuals?**
3 A. Yes.
4 Q. Can you just tell us, going through
5 each one, just generally what part of operations
6 they focus on, like Kim Wolfe, starting with
7 Kim?
8 A. Well, Kim Wolfe focused on reference
9 data.
10 Q. And what do you mean by "reference
11 data"?
12 A. All the instruments, all the account
13 clients, making sure those databases were, you
14 know, running.
15 Q. When you referred to accounts clients,
16 I'm just trying to get a better sense of --
17 A. Customer accounts. So if we trade
18 with a new customer, we have to set up that
19 account, and if we trade a new instrument, we
20 have to set up that instrument in our databases.
21 Q. How about Larry Dorr?
22 A. Lucy Dorr.
23 Q. I'm sorry, Lucy Dorr. That's my own
24 handwriting.
25 A. Also, there's another one. Larry

Page 20

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 A. Larry runs the Loans Team, primary and
3 agency.
4 Q. And John Haley?
5 A. John Haley also runs settlements.
6 John Haley ran some of the products. John
7 Clifford ran some of the other products.
8 Q. All right. Were any of these folks
9 with you working over that weekend,
10 Saturday/Sunday?
11 A. They may have been. I don't remember,
12 but they could have been.
13 Q. Going into that week, the week of
14 September 15th, 2008, again give us just a brief
15 overview of what you were doing that week in
16 connection with the Lehman/Barclays transaction.
17 A. Okay. Well, the weekend, again,
18 nothing had been formalized, so it was informal
19 discussions about what we might do and various
20 discussions with colleagues. I may have been in
21 the office, I may not have, I don't remember.
22 And part of the reason for that is I
23 have -- I had two homes at that point. We had
24 an office in Whippany, New Jersey, where I had a
25 corporate apartment, and I have a home on Long

Page 19

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Sola, too, just as I'm thinking about it.
3 Q. So Lucy Dorr?
4 A. Lucy Dorr was responsible for all the
5 middle office functions, sitting on the trading
6 floor, middle office being after the trade's
7 booked, making sure that the trade is processed
8 downstream into the various systems.
9 Q. John Clifford?
10 A. John Clifford was responsible for
11 settlements.
12 And I need to add another name: John
13 Haley. That should be it now.
14 Q. Is it Jordan? No. Clifford, is it
15 Clifford?
16 A. That's John Clifford, which is
17 settlements. That's the one we just said.
18 Q. Pietruski?
19 A. Jason Pietruski runs the Collateral
20 Management Group.
21 Q. What does that job entail?
22 A. It's the -- most of the job is related
23 to the OTC derivatives, the mark to markets for
24 collateral calls on swaps and options.
25 Q. Larry Sola?

Page 21

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Island, so I don't know where I was, to be
3 honest with you, during that period of time. I
4 could have been in either place or in either
5 office.
6 Monday I came in, normal day, and
7 related to the Lehman, I believe that's the day
8 that we settled a tri-party with Lehman. And I
9 believe that was the only thing that I can
10 remember specifically that was happening on the
11 Monday.
12 Q. And then did you have a role to play
13 in settling that tri-party with Lehman on
14 Monday?
15 A. Yes. I instructed the payment to be
16 made.
17 Q. And that was a preexisting tri-party
18 agreement from the prior week?
19 A. I don't recall when the tri-party
20 agreement we had with Chase and Lehman, if it
21 was in a preexisting or if it was a -- one
22 drafted up that day or whatever. I just don't
23 recall what it was.
24 Q. And if there had been any kind of
25 amendment made to that tri-party agreement, is

Page 22

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 that something you would have been involved in?
3 A. Probably not. As long as I knew we
4 had an agreement in place, I was going -- I
5 would settle it.
6 Q. So that's the Monday. Let's go down
7 the week. What's your recollection of what your
8 involvement was with the Lehman/Barclays
9 transaction the next day?
10 A. I believe on Tuesday we increased the
11 tri-party, and I forget if it went from 2 to 5
12 or 2 to 10, I just don't remember that, and it
13 was at that point, I believe it was on Tuesday
14 afternoon that we found out that we might have
15 to take over the funding for the discount window
16 for taking the Lehman and Chase out and putting
17 Barclays and BONY in place.
18 Q. And you'd be taking over the discount
19 window from the Fed financing that was being
20 provided?
21 A. Correct. So that was the first, I
22 believe it was on Tuesday that that was raised
23 as that had to happen by Thursday.
24 Q. And there was a much larger repo
25 financing transaction done by Barclays on

Page 24

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 sure it ran smoothly; is that correct?
3 A. That's correct.
4 Q. Okay. It's my understanding that the
5 collateral that had been pledged to the Fed was
6 going to be transferred either via Fed wire or
7 DTC; is that correct?
8 A. Yes.
9 Q. Were there also any physical
10 securities that would need to be transferred?
11 A. We weren't sure at the time. We just
12 didn't have the full population at the time.
13 Q. Going into Thursday, did you play any
14 role in drawing up lists or reviewing lists of
15 collateral that would be transferred over?
16 A. On the -- we had gotten a list I
17 believe it was either Tuesday or Wednesday of
18 the population that would be coming to us.
19 Q. And this is a list you got from
20 Lehman?
21 A. I think it came from Lehman. I'm -- I
22 just don't recall, but I'm assuming it either
23 came from Lehman or in-house. Somebody gave it
24 to us.
25 Q. Did the list that you received on this

Page 23

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Thursday, correct?
3 A. That's correct.
4 Q. Is that the \$45 billion?
5 A. Correct.
6 Q. Between the Tuesday and the Thursday,
7 what role, if any, did you play in anticipation
8 of that \$45 billion funding?
9 A. In terms of the role that I played, it
10 was more of coordination, working with the likes
11 of the settlements folks, both at Lehman and at
12 Barclays, to rationalize how we were going to
13 unwind one, take it to the other, and get it all
14 done in the same day. So it was more of
15 operational aspects of how to get it done based
16 on a defined population.
17 Q. We've heard about a couple of
18 meetings. One meeting at the Fed, one meeting
19 at the DTCC.
20 Do you recall being at any such
21 meeting in connection with that?
22 A. I wasn't -- no, I didn't attend any of
23 those meetings.
24 Q. And again, your focus in discussing
25 all of this was from the operations side to make

Page 25

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Tuesday or Wednesday timeframe have any
3 valuation for the collateral?
4 A. I don't recall. I don't know. I
5 really did not focus on the list per se other
6 than the fact that it was a list out there.
7 Q. And again, in this time period,
8 Monday, Tuesday, Wednesday of that week of the
9 15th, had anyone described to you generally what
10 the overall Lehman/Barclays transaction was
11 about?
12 A. I don't believe so. I believe at the
13 time I was just told that we were doing a large
14 financing trade because that there was some type
15 of an acquisition was going to take place.
16 Having been involved in a due
17 diligence the prior weekend, I knew that we were
18 looking at Lehman, various aspects, you know, so
19 I knew that that was out there, but didn't know
20 what we were looking to buy, what we were
21 looking to sell, other than the fact I knew I
22 had to process whatever came down.
23 Q. In connection with the Lehman/Barclays
24 transaction, there's a contract called the Asset
25 Purchase Agreement. Is that a contract that

Page 26

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 you've ever seen?
3 A. Yes.
4 Q. Okay.
5 A. Yeah, I believe I saw that in December
6 when we were looking at the Chase settlement. I
7 think that might be the first time I saw that.
8 Q. There's another document that's
9 referred to as a clarification letter. Are you
10 familiar with that phrase?
11 A. I'm familiar with the phrase. I don't
12 believe I saw a clarification letter.
13 Q. Do you have any understanding of a
14 clarification letter and what role, if any, it
15 may have played in the Lehman/Barclays
16 transaction?
17 A. No.
18 Q. And just filling in some blanks in my
19 mind from your answer about the Asset Purchase
20 Agreement, is it fair to say that you had no
21 role in the negotiation of the Asset Purchase
22 Agreement in any way?
23 A. That's correct, I had no role at all
24 in that.
25 Q. You were just shown the agreement for

Page 28

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Thursday. So we have to start there.
3 So we came in with a plan on Thursday
4 to process the reverse repo, and the kick-off
5 was to send them funds, piece of the funds, and
6 then taking collateral back, and then we would
7 repeat that exercise until we got up to the 45
8 billion that was necessary to complete the
9 transaction. So I was sitting at 200 Park
10 Avenue. Most of the action would have been done
11 in our Whippany office because that's where our
12 processing hub was.
13 So, on the phone with the folks in
14 Whippany, sent over the first 5 billion sometime
15 in the morning, and it was taking quite a long
16 time to get the collateral back to settle the
17 first tranche. Recognizing that we had a long
18 way to go, recognizing that the market
19 facilities have closing times, the Fed, DTC, and
20 not getting enough of the answers, I took a cab
21 over to the Lehman offices at 745 Seventh
22 Avenue.
23 It was there I met with David Aronow
24 and some other folks, possibly Alastair,
25 possibly others, I just don't remember who was

Page 27

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 the first time sometime in December?
3 A. Yes.
4 Q. In September, in the week of September
5 15th, did anyone describe to you orally,
6 broadly, the economics of the deal?
7 A. I'm sorry, when was this?
8 Q. The week of September 15th.
9 A. No.
10 Q. Thereafter, after the week of
11 September 15, has anyone ever described to you
12 broadly the economics of the deal?
13 A. No.
14 Q. Do you have any understanding one way
15 or the other whether Barclays recognized a gain
16 on the acquisition of the Lehman assets that it
17 purchased?
18 A. No.
19 Q. Going into Thursday of that week, it's
20 the 18th, describe for me generally what you
21 were doing on the 18th? That's the day of the
22 big repo.
23 A. Okay. Starting on Wednesday, we had a
24 plan put in place between the two organizations
25 on how we were going to process the work on

Page 29

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 there on that morning, and we discussed why it
3 was taking so long to get the rest of the
4 collateral on the first lot of 5 billion.
5 From that point on, there were lots of
6 discussions, and at some point in the early
7 afternoon, we were told to send the bulk of the
8 money over, that there was commitment to send
9 collateral to us, okay? So I instructed our
10 payments group to make the rest of the 40
11 billion.
12 We took in the rest of the collateral.
13 We worked to take in the rest of the collateral.
14 The market facilities, the Fed wire and DTC,
15 extended their closing time late into the
16 evening, and we worked to get the collateral in
17 the door to satisfy the reverse repo.
18 Q. And when all the action stopped, the
19 transfers stopped Thursday night, what was the
20 status of the collateral movement? How much had
21 moved over?
22 A. On the securities or the cash?
23 Q. On the securities.
24 A. On the securities, what Bank of New
25 York had told us at the point in time from their

Page 30

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 records that they had felt that there was I
3 believe 42-point-something billion of market
4 value that had come in.
5 **Q. And how about on the cash side?**
6 **A.** On the cash side, we had taken in a
7 piece of -- well, 300 million, originally, which
8 was part of DTC because one of the securities
9 had matured, so they paid us the cash rather
10 than the securities as the collateral. And then
11 we then went into, we were short collateral, and
12 we did a tri-party for the difference of the 7
13 billion.
14 **Q. So there was a 7 billion cash**
15 **component and a 42-and-change billion dollar**
16 **securities component?**
17 **A.** Based on BONY's marks, yes. We had no
18 line of sight to those marks.
19 **Q. What do you mean by that?**
20 **A.** I didn't see them personally.
21 **Q. Later on, in subsequent days, Friday,**
22 **Saturday of that week, the 19th, the 20th, did**
23 **anyone express to you any concerns about the**
24 **BONY marks?**
25 **A.** I'm sorry, what dates?

Page 32

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 reconcile values, anything of that nature?
3 **A.** No.
4 **Q. Were you aware of other people doing**
5 **that at Barclays?**
6 **A.** Not directly aware. I assumed other
7 people were looking at it, but I don't know
8 specifically, you know, that anybody on an
9 individual basis was looking at them.
10 **Q. Putting aside the collateral that**
11 **moved on Thursday, the 18th, were you involved**
12 **in any collateral movements that were initiated**
13 **on Friday, the 19th?**
14 **A.** I'm sorry, say that again.
15 **Q. Were you involved in any collateral**
16 **movements from Lehman to Barclays that were**
17 **initiated on Friday, the 19th?**
18 **A.** Yes.
19 **Q. Okay. Describe those, please.**
20 **A.** On Friday morning, Lehman delivered us
21 a population of securities, I believe it was a
22 billion and change, to our Bank of New York
23 account and I took those securities in.
24 **Q. When you say "a billion and change,"**
25 **does 1.9 sound about right?**

Page 31

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **Q. The Friday, Saturday, the subsequent**
3 **days.**
4 **A.** Not -- no, I don't believe -- no, I
5 don't recall the discussions on anybody raising
6 issues to me on the marks themselves.
7 **Q. Were there any issues raised on the**
8 **Friday, Saturday, Sunday, so again the days**
9 **after this collateral movement took place, about**
10 **the Cusips that had been transferred over?**
11 **A.** The -- well, by and large, we didn't
12 have many of the Cusips in our systems because
13 we didn't trade the products. So a large
14 percentage of the assets that we took in we had
15 not in our systems to begin with. So the
16 question -- we didn't have questions because we
17 didn't even have the trades. The securities, we
18 didn't trade some of the securities, so it
19 wouldn't -- there was no questions, it was just
20 that we took them and we put them into Bank of
21 New York as a lockup place.
22 **Q. Were you involved in any discussions**
23 **or any activities on the Friday, Saturday,**
24 **Sunday after there was collateral movement to**
25 **try and reconcile pieces of collateral, to**

Page 33

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **A.** It could have been. I just -- I know
3 it was over a billion.
4 **Q. And do you know why Lehman was**
5 **delivering these securities on Friday?**
6 **A.** Not particularly.
7 **Q. Have you heard anything about it?**
8 **A.** I knew it was coming, but I wasn't
9 aware if it was collateral or anything else.
10 They just came, so I took them in.
11 **Q. Were there any transfers of cash from**
12 **Lehman to Barclays that you were aware of on**
13 **Friday?**
14 **A.** No.
15 **Q. After that weekend of the 20th/21st of**
16 **September -- actually, withdraw that. At any**
17 **time in connection with the Lehman/Barclays**
18 **transaction were you involved in any discussions**
19 **concerning OCC margin?**
20 **MR. SHAW:** And let me just caution you
21 not to discuss -- not to disclose any
22 discussions you had with counsel for
23 Barclays about that issue.
24 **THE WITNESS:** Okay.
25 There were discussions with counsel on

Page 34

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 that subject subsequent, not on those days.
3 Q. So but in those days, so around
4 September 18th, 19th, a few days after that,
5 were you involved in any discussions about OCC
6 margin?
7 A. I had discussions with counsel.
8 Q. In that time period?
9 A. I had discussions with counsel I don't
10 believe during that timeframe, but I had
11 discussions. I don't recall the days I had
12 discussions with counsel.
13 Q. Other than counsel, did you discuss it
14 with anyone else?
15 A. With counsel always on-site.
16 Q. Here's my question: Are you asking
17 questions or providing information to counsel,
18 or are you having discussions about OCC margin
19 with other operations people and counsel happens
20 to be present?
21 A. Counsel drove them.
22 Q. Counsel drove them, okay. And could
23 you identify who the counsel were?
24 MR. SHAW: You can give the names.
25 A. Alan Kaplan.

Page 36

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 after. I'm not sure of the dates.
3 Q. And other than yourself and
4 Mr. Kaplan, who else was present at that
5 discussion?
6 MR. SHAW: You can answer that.
7 A. At different times, Jonathan Hughes,
8 might have been James Walker, may have been
9 Alastair Blackwell. Those are the names that
10 come to mind.
11 Q. And just so I know who these
12 individuals are, Mr. Hughes?
13 A. He's global head of counsel.
14 MR. SHAW: Global general counsel for
15 Barclays.
16 Q. Walker?
17 A. He was the CFO.
18 Q. And Blackwell?
19 A. At the time, he was -- well,
20 subsequent to the acquisition, he became head of
21 U.S. Ops. for Barclays.
22 Q. And sounds like from your prior answer
23 that there were a series of discussions; is that
24 right?
25 A. Yeah, there were more than one.

Page 35

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 Q. In-house lawyer at Barclays?
3 A. Associate general counsel.
4 Q. And again, without going into the
5 substance of the discussions, was that topic of
6 OCC margin the subject of discussion that you
7 had after that point in time, so October,
8 November, December to the present?
9 A. It was not in -- I don't even believe
10 it was in September. I don't recall the dates,
11 but I don't believe it was in September.
12 Q. Okay. Then maybe I'm unclear on when
13 you had the discussion on this topic with
14 Mr. Kaplan. Was it in September 2008?
15 A. I don't believe so.
16 Q. Is it your general recollection that
17 it was long after the closing of the
18 Lehman/Barclays transaction?
19 MR. SHAW: You can give the time
20 period.
21 A. Yes, it was long after, I believe.
22 Q. After the December settlement?
23 A. I don't recall. It could have been
24 before the December settlement. It could have
25 been right at that time. It could have been

Page 37

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 Q. And different people from this group
3 were involved in different discussions; is that
4 correct?
5 A. Say that again.
6 Q. All of the same group of people
7 weren't in every discussion, Kaplan, Hughes,
8 Walker, Blackwell and you, it wasn't this group
9 of five meeting every single time; is that
10 right?
11 A. No, it wasn't. It was different
12 times, different people. Those are the names
13 that I recollect.
14 Q. Putting aside these discussions, just
15 generally in terms of what you do day-to-day,
16 what you did day to day in operations, what was
17 your involvement with OCC margin?
18 A. Zero, probably, other than the fact
19 that we had a team that might have managed a
20 small amount of activity, and if anything ever
21 surfaced as a problem, but I don't recall ever a
22 major problem in OCC that I had to get involved
23 in. It's a very, very, pre-acquisition, it was a
24 very small part of our business as Barclays.
25 There was nothing on my radar.

Page 38

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 Q. And OCC is the Options Clearing Corp.,
3 correct?
4 A. Yes.
5 Q. And the exchange-traded options,
6 certain exchange-traded options are traded
7 through the OCC, correct?
8 A. I assume so, yeah.
9 Q. If I understand your prior answer,
10 Barclays, pre-Lehman acquisition, didn't do a
11 significant amount of business on the OCC,
12 correct?
13 A. I think that's a fact, yes. I don't
14 know for certain what we were doing pre-Lehman
15 at this time. I just don't remember.
16 Q. And it's your understanding that among
17 the assets acquired in the transaction was more
18 OCC business than you had done before, is that
19 fair?
20 A. I would -- I don't know the answer to
21 that. I don't know what we were doing in terms
22 of volume before or after.
23 Q. Okay. But there were OCC issues that
24 you were dealing with post-acquisition?
25 A. There may have been. I don't remember

Page 40

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 (Record read.)
3 MR. SHAW: And I'm going to instruct
4 you not to answer the question and asserting
5 privilege.
6 MR. TAMBE: And is it attorney-client
7 privilege? Work product? Both?
8 MR. SHAW: Both.
9 BY MR. TAMBE:
10 Q. Do you have an understanding one way
11 or the other whether assets that were
12 transferred from Lehman to Barclays included OCC
13 positions and the associated margin with those
14 positions?
15 MR. SHAW: And I will caution you not
16 to reveal any information you learned in the
17 course of discussions with counsel, but if
18 you have an answer outside of that context,
19 you can answer it.
20 A. Outside of that context, I knew there
21 was OCC business.
22 Q. From an operations side, did you have
23 to make any special arrangements to be able to
24 conduct that business at Barclays?
25 A. We would have had to process transfer

Page 39

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 specifically. There may not have been, to be
3 honest with you.
4 Q. And again, putting aside the
5 discussions with counsel, did you have any
6 discussions with anyone else about OCC
7 operations post acquisition?
8 A. No.
9 Q. In any of these discussions you had
10 with counsel, do you recall providing a witness
11 statement?
12 MR. SHAW: We're not going to get into
13 substantive discussions with counsel.
14 MR. TAMBE: If he wrote a prior
15 witness statement we're allowed to ask it.
16 MR. SHAW: We're not going to get into
17 discussions with his involvement with
18 counsel.
19 Q. So we have our record clear, sir, in
20 any of your discussions with counsel, did you
21 provide a witness statement, yes or no?
22 MR. SHAW: Let me take a break and
23 discuss this with him out in the hall.
24 (The witness and Mr. Shaw leave the
25 room to confer.)

Page 41

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 positions or whatever the process would have
3 normally been to move positions.
4 Q. Okay. And who amongst your sort of
5 lead deputies would have been responsible for
6 that?
7 A. I don't recall, but it -- I don't
8 recall specifically, but -- I know the team that
9 runs that team, but I don't know who would have
10 done the processing.
11 Q. And who runs that team?
12 A. Matthew, I don't know -- I can't
13 remember his last name off the top of my head.
14 It's just Matt something. I can get it, I just
15 don't have it.
16 Q. Do you recall being involved in any
17 discussions or activities concerning 15c3-3
18 amounts?
19 A. I had heard there were several
20 discussions on it, yes, I had heard that.
21 Q. And what had you heard about those
22 amounts?
23 A. That -- specifically, I didn't know
24 what the issues were other than the fact that it
25 was being handled by a different team of people

Page 42

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 than me.
3 (Exhibit 279A, a document bearing
4 Bates Nos. BCI-EX-(S)-47450 through 47452,
5 marked for identification, as of this date.)
6 Q. Sir, I've handed you a three-page
7 document marked Exhibit 279A. It's an e-mail
8 exchange. If you could take a look at it, let
9 me know when you're done reviewing it, and I'll
10 ask you some questions.
11 (Document review.)
12 A. Uh-huh.
13 Q. Done?
14 A. Yes.
15 Q. Who's Labib Mahfouz?
16 A. He was a colleague of mine at Barclays
17 who had left the organization sometime before
18 that.
19 Q. Did he work in operations at Barclays?
20 A. No.
21 Q. What was his role at Barclays?
22 A. He was a business manager for credit
23 derivative businesses, I believe.
24 Q. In the middle of page 1 of Exhibit
25 279A, there's an e-mail from Mr. Mahfouz to you,

Page 44

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 breaks, making sure all the trades were
3 accounted for, anything to do with the normal
4 course of balancing our depots to our books and
5 records.
6 Q. You described before the December
7 settlement. What role, if any, did you play in
8 connection with the December settlement?
9 A. Sometime in mid December, I believe, I
10 was told that we were going to have a settlement
11 of some sort, and at that point somebody, a
12 managing director from Chase's operations group
13 reached out to me through e-mail and introduced
14 herself and said, we're going to have a
15 settlement, we believe there's a settlement
16 going to be occurring in the near future, wanted
17 to put names into the frame of who was going to
18 be involved, and we -- and said that -- we
19 started initial dialogue about the settlement of
20 the portfolio that was coming over and how
21 operationally we were going to handle the cash
22 aspects of all the corporate actions that would
23 have been engaged because of the fact that the
24 transaction is going to be dated as of
25 September.

Page 43

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 and he says, "The Lehman deal is great.
3 Basically bought a broker-dealer for \$250
4 million. Nice building." Do you see that?
5 A. Yeah.
6 Q. Was that your understanding of the
7 transaction being --
8 A. I have no idea what he was talking
9 about there.
10 Q. Had you had any discussions with
11 Mr. Mahfouz about the transaction?
12 A. No.
13 Q. I'm going to ask you some questions
14 about the mechanics of the repo that we
15 discussed before, but just to close out one
16 area, after the transaction occurred, so getting
17 into late September or October and later, can
18 you just describe what your involvement was, if
19 any, with the Lehman integration?
20 A. On a management side, structuring the
21 groups to get integration between the support
22 organizations, logistics and so forth. So there
23 was the business side, and then on the other
24 side was making sure all the clean-up work was
25 done in terms of any cash breaks, settlement

Page 45

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 So any corporate actions between
3 September and December would have had cash
4 flows, possibly, and we talked about the
5 mechanics and who would have to be engaged in
6 both organizations to make sure that we could
7 tie out to the number prior to the settlement to
8 make it as painless as possible for both
9 organizations.
10 Q. And the corporate actions you're
11 talking about are things like payment of
12 interest or dividends or even maturity of
13 securities?
14 A. Correct. Would probably not have been
15 maturities. More likely would have been
16 dividends, straight dividends and interest, and
17 talked about where the depots where we would
18 receive collateral and so forth.
19 Q. And again, your job was to speak
20 with -- or, your involvement was to speak with
21 this person from JPM and make sure that that
22 process moved smoothly?
23 A. Yes.
24 Q. Did you have any involvement in
25 identifying collateral to be moved or valuing

Page 46

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 collateral to be moved?
3 A. No, I was given a list.
4 Q. Who gave you a list?
5 A. I don't recall if it was Chase or if
6 somebody internally had sent it to me, but I did
7 get the list.
8 Q. And how long was your involvement?
9 How many days were you involved in this December
10 exercise?
11 A. Right through the settlement, and any
12 reconciliations that would have taken place
13 after the movement of the securities and the
14 cash, there were -- there was a protracted
15 reconciliation going on on the physical
16 securities that we received that took probably
17 the better part of a month to reregister them
18 out of the name of the previous holders into
19 Barclays' name. So, from a mechanics point of
20 view, I was involved in that probably into
21 January.
22 MR. TAMBE: Let's just take a short
23 break. We'll get some exhibits together and
24 carry on.
25 (Recess; Time Noted: 10:26 A.M.)

Page 48

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 a guru on the GCF stuff.
3 Q. On the second page, there's one
4 particular bullet point I want to ask you about.
5 There's a bullet point where John Haley writes,
6 "Lehman pledges to BONY Account 855."
7 Do you see that?
8 A. Yes.
9 Q. Do you have any understanding about
10 that account, the 855 account at BONY?
11 A. Limited. I know it's an account that
12 Barclays has that we take in collateral to.
13 Q. Was that account specifically set up
14 for purposes of this transaction?
15 A. I don't recall. I don't believe so.
16 It may have been open prior to that, but I don't
17 know that for certain.
18 Q. I have placed before you a document
19 previously marked Exhibit 124. If you take a
20 moment to look at it, let me know when you're
21 done and I'll ask you a few questions.
22 A. Okay.
23 (Document review.)
24 A. Okay.
25 Q. Just drawing your attention to the

Page 47

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 (Time Noted: 10:33 A.M.)
3 (Exhibit 280A, a document bearing
4 Bates Nos. BCI-EX-(S)-47647 through 47648,
5 marked for identification, as of this date.)
6 BY MR. TAMBE:
7 Q. Sir, I have placed before you a
8 two-page document marked 280A. Take a moment to
9 look at it. I'll ask you a couple of questions.
10 (Document review.)
11 A. Okay.
12 Q. Focusing on the e-mail at the top of
13 page 1 from John Haley to you and others, do you
14 see that?
15 A. Yes.
16 Q. Mr. Haley makes a comment in his
17 e-mail, second sentence, "There is some Fed
18 collateral that is not eligible for GCF
19 transaction." Do you understand what he meant
20 by that?
21 A. No.
22 Q. What is a GCF transaction?
23 A. I don't know. I'm not a -- it's -- I
24 assume it's some type of cash management
25 tri-party something, but I just don't -- I'm not

Page 49

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 e-mail that starts on page 1 over onto page 2,
3 which is an overview of the mechanics of the
4 trade that was done on Thursday, did you play
5 any role in developing those mechanics?
6 A. I'm sure I participated in some of
7 those conversations that I was part in most of
8 those discussions on Tuesday and Wednesday as we
9 prepped for it. Much of the discussion I
10 believe was John Haley discussing it, the actual
11 aspects of the deliveries and the receipts as a
12 settlement protocol with his colleagues at
13 Lehman.
14 Q. Was it your understanding that all of
15 the collateral pledged by Lehman to the Fed was
16 going to be transferred to Barclays?
17 A. I was aware that we were -- we had a
18 list that was going to be transferred to us.
19 Whether that list had all Fed stuff in it or
20 other stuff I wasn't privy to. So whatever was
21 on the list is what I knew we were taking. That
22 may or may not have been discount window.
23 Assumption probably was a good piece of it was,
24 but if it was in total, I didn't have access to
25 that information.

Page 50	Page 51
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Did you have any understanding that</p> <p>3 there were assets pledged to the Fed that</p> <p>4 Barelays had specifically said would be excluded</p> <p>5 from the transfer?</p> <p>6 A. No.</p> <p>7 Q. Are you aware generally of any list of</p> <p>8 excluded assets that was transmitted by Barelays</p> <p>9 to Lehman in connection with this transaction?</p> <p>10 A. There was a list, and I don't know if</p> <p>11 it was transmitted to them or if we had a list,</p> <p>12 that there was concern that we did not want any</p> <p>13 substitutions from the list. So we were given a</p> <p>14 list, and I don't remember if I saw the list or</p> <p>15 if it went to the Whippany office or whatever,</p> <p>16 but I recognized that there was a list of assets</p> <p>17 that we weren't going to take in case there had</p> <p>18 to be substitutions for whatever reason.</p> <p>19 Q. And just so we understand, generally</p> <p>20 why would there be reasons for substitution in</p> <p>21 the context of a repo?</p> <p>22 A. Well, typically there wouldn't be,</p> <p>23 right? But typically you repo one for one, one</p> <p>24 trade, one repo, not one trade, multiple</p> <p>25 securities.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Was this trade any different where</p> <p>3 there was a concern that there might be</p> <p>4 substitutions?</p> <p>5 A. No, we were working off of the</p> <p>6 assumption that we were going to get what was on</p> <p>7 the list.</p> <p>8 (Exhibit 281A, a document bearing</p> <p>9 Bates Nos. BCI-EX-(S)-47924 through 47926,</p> <p>10 marked for identification, as of this date.)</p> <p>11 Q. Sir, I have placed a three-page</p> <p>12 document before you marked Exhibit 281A. Take a</p> <p>13 moment to look at that and I'll ask you some</p> <p>14 questions.</p> <p>15 A. Okay.</p> <p>16 (Document review.)</p> <p>17 A. Okay.</p> <p>18 Q. I'll focus on the first e-mail on page</p> <p>19 1, over onto page 2. It's from John Haley to</p> <p>20 several people, including you. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Judging from the time and date stamp,</p> <p>23 this is appears to be late Thursday night in --</p> <p>24 A. Yeah.</p> <p>25 Q. -- New York, right?</p>
Page 52	Page 53
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Early Friday morning, actually.</p> <p>3 Q. Early Friday morning.</p> <p>4 A. It's actually late, yeah, it's GMT</p> <p>5 time. So it's probably 12 o'clock. I don't</p> <p>6 know what time it is.</p> <p>7 MR. SHAW: It's daylight savings, so</p> <p>8 probably about 1 in the morning.</p> <p>9 THE WITNESS: Okay.</p> <p>10 Q. So we have in the e-mail from</p> <p>11 Mr. Haley to you and others sort of a recap of</p> <p>12 the transaction, correct?</p> <p>13 A. Yes.</p> <p>14 Q. The values that appear in his e-mail,</p> <p>15 do you know where those values come from?</p> <p>16 A. Bank of New York.</p> <p>17 Q. Just generally from the operations</p> <p>18 perspective, if you have collateral that's</p> <p>19 coming to you from a custodian for a tri-party</p> <p>20 arrangement, do the values ascribed by the</p> <p>21 tri-party custodian travel with that collateral?</p> <p>22 That wasn't a good question.</p> <p>23 From an operations perspective, if you</p> <p>24 have collateral going back and forth in a</p> <p>25 tri-party repo arrangement?</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Right.</p> <p>3 Q. Is it your understanding that the</p> <p>4 custodian for that tri-party repo agreement</p> <p>5 assigns values for that collateral?</p> <p>6 A. Typically, they will assign values</p> <p>7 because they are the ones that are going to</p> <p>8 allocate it into the third party to secure the</p> <p>9 overnight loan, but we have our own systems that</p> <p>10 also value that collateral. So we'll</p> <p>11 sanity-check what the third party tri-party</p> <p>12 agent puts on to make sure we're getting</p> <p>13 efficient use of our collateral versus the cash</p> <p>14 we're borrowing.</p> <p>15 So, in essence, they put the values</p> <p>16 on, which is the rules of the road, but we can</p> <p>17 challenge it, and we do if we don't think that</p> <p>18 they're putting accurate values on that what our</p> <p>19 systems are telling us.</p> <p>20 Q. And in connection with the</p> <p>21 Lehman/Barelays repo, are you aware of any</p> <p>22 challenges made by Barelays to the BONY</p> <p>23 evaluations?</p> <p>24 A. No, to the extent that we didn't</p> <p>25 have -- typically, we would own the securities,</p>

Page 54	Page 55
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 so we would know what the values are from our</p> <p>3 own systems. This was an unusual circumstance.</p> <p>4 We didn't have the trades in our system, so we</p> <p>5 didn't have the ability to challenge from a</p> <p>6 systems perspective.</p> <p>7 (Exhibit 282A, a document bearing</p> <p>8 Bates Nos. BCI-EX-(S)-47942 through 47944,</p> <p>9 marked for identification, as of this date.)</p> <p>10 Q. Sir, I have placed before you a</p> <p>11 document marked Exhibit 282A. Take a moment to</p> <p>12 look at that document and let me know when</p> <p>13 you're done. I'll ask you a couple questions.</p> <p>14 A. Okay.</p> <p>15 Q. This e-mail chain in Exhibit 282A on</p> <p>16 the first page has an e-mail from you to Teri</p> <p>17 Scott and several other people at Barclays, do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And just looking at the names and the</p> <p>21 e-mail addresses, looks like a lot of these</p> <p>22 folks are in the Finance Department at Barclays,</p> <p>23 is that fair?</p> <p>24 A. Yeah, ops. and finance, yes.</p> <p>25 Q. And you were providing a report in</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 this e-mail describing the close-out of the</p> <p>3 tri-party for 15.8 billion, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you're describing broadly the</p> <p>6 Barclays/Lehman repo which took out the Fed,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. I want to understand for what purpose</p> <p>10 are you providing the summary to the finance</p> <p>11 people?</p> <p>12 A. Just as a form of completeness, I</p> <p>13 think. There was probably no motivation other</p> <p>14 than just keeping everybody in the loop of where</p> <p>15 we were.</p> <p>16 Q. And further up in that e-mail chain,</p> <p>17 there's a response to your e-mail from someone</p> <p>18 in the Treasury Department, Mr. Garcha, do you</p> <p>19 see that?</p> <p>20 A. Yes.</p> <p>21 Q. And he says, "Scott Wadlow has some</p> <p>22 questions for you," see that?</p> <p>23 A. Yes.</p> <p>24 Q. Who is Scott Wadlow?</p> <p>25 A. I don't know. I assume it was</p>
Page 56	Page 57
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 somebody in Treasury or somebody. I don't know</p> <p>3 the -- the name vaguely looks familiar, but I</p> <p>4 don't know who he is.</p> <p>5 Q. Let me go way out on a limb here. Do</p> <p>6 you remember speaking with Mr. Wadlow?</p> <p>7 A. No.</p> <p>8 Q. Do you remember speaking with anyone</p> <p>9 from Treasury on or about February -- sorry, on</p> <p>10 or about Friday, the 19th of September, about</p> <p>11 this transaction?</p> <p>12 A. I very well could have. I don't</p> <p>13 recall specific conversations. I worked right</p> <p>14 through the night through till the next day, so</p> <p>15 there would, you know, there could have been</p> <p>16 conversations and I'm just not remembering them,</p> <p>17 nothing in particular.</p> <p>18 Q. Were you involved at all in working</p> <p>19 with Barclays' auditors to prepare the account</p> <p>20 statements for Barclays concerning this</p> <p>21 acquisition?</p> <p>22 A. Peripherally, yes. They had asked me</p> <p>23 some questions and sat down with me, but I don't</p> <p>24 remember specific working with them on it at</p> <p>25 all.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Do you remember any of the topics on</p> <p>3 which they asked you questions?</p> <p>4 A. Sure. They asked about the</p> <p>5 transaction itself and just general what would</p> <p>6 happen over those two days and how we accounted</p> <p>7 for the securities and how we booked and</p> <p>8 rebooked the trades and what was the</p> <p>9 reconciliation process and so forth and so</p> <p>10 forth, more mechanical in nature, making sure</p> <p>11 all the trades got into the system, did we</p> <p>12 reconcile to the depots and so forth and so</p> <p>13 forth. So I'm sure there were conversations of</p> <p>14 that nature regarding the transaction.</p> <p>15 Q. Do you recall having any discussions</p> <p>16 with anyone about where, what legal entity the</p> <p>17 trades would be booked in for tax purposes?</p> <p>18 A. Related to the September --</p> <p>19 Q. Related to the Lehman/Barclays</p> <p>20 transaction either in September or any transfers</p> <p>21 that were made in December.</p> <p>22 A. In December there were discussions</p> <p>23 about legal entities related to the Chase</p> <p>24 settlement.</p> <p>25 Q. Okay. And with whom did you have</p>

Page 58	Page 59
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 those discussions?</p> <p>3 A. I assume it was -- I don't remember</p> <p>4 specific people, but I assume it was the</p> <p>5 business folks on the desk and people in finance</p> <p>6 or product control, finance.</p> <p>7 Q. And if you could describe for us what</p> <p>8 those discussions were. What did you talk</p> <p>9 about?</p> <p>10 A. Just more of a, again, more of a</p> <p>11 mechanical nature, is how would we reflect them</p> <p>12 on our books given the fact that they were on a</p> <p>13 different Barclay entity, how would we make sure</p> <p>14 we would keep control of the securities and so</p> <p>15 forth.</p> <p>16 Q. Were you involved in any discussions,</p> <p>17 either in September or on December, about</p> <p>18 booking the transferred securities into</p> <p>19 particular Barclays entities so as to minimize</p> <p>20 U.S. tax impact?</p> <p>21 A. No, I was not involved in any of those</p> <p>22 discussions. I was told which entity to book</p> <p>23 them to. That was it.</p> <p>24 (Exhibit 283A, a document bearing</p> <p>25 Bates Nos. BCI-EX-(S)-47719 through 47724,</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 marked for identification, as of this date.)</p> <p>3 Q. Sir, I have placed before you a</p> <p>4 document marked Exhibit 283A. Take a moment to</p> <p>5 review that e-mail chain and let me know when</p> <p>6 you're done.</p> <p>7 (Document review.)</p> <p>8 A. Okay.</p> <p>9 Q. I'm just going to start with the back</p> <p>10 of this e-mail chain 283A and ask you first</p> <p>11 about some questions about some names.</p> <p>12 Working from the back, the first</p> <p>13 e-mail in this chain is an e-mail that begins on</p> <p>14 page 7722, if you look at the bottom last four</p> <p>15 digits at the bottom, from Beatrice Montaudy,</p> <p>16 M-O-N-T-A-U-D-Y. And who is that?</p> <p>17 A. She works as an analyst in the Tax</p> <p>18 Department of Barclays Capital.</p> <p>19 Q. And she's got a series of questions in</p> <p>20 her e-mail. That e-mail eventually ends up</p> <p>21 getting forwarded to you, if you'll look on page</p> <p>22 7720. I think it's Mark Rudduck, R-U-D-D-U-C-K,</p> <p>23 who forwards that e-mail to you that's in</p> <p>24 question. See that?</p> <p>25 A. Yes.</p>
Page 60	Page 61
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. And who is Mark Rudduck?</p> <p>3 A. Mark Rudduck I believe is the business</p> <p>4 manager for the equity business out of our</p> <p>5 London office on the business side.</p> <p>6 Q. Having reviewed this document, do you</p> <p>7 have a recollection of this discussion taking</p> <p>8 place about where the equities would be booked?</p> <p>9 A. No, not particularly to this</p> <p>10 discussion, but I just remember that there was</p> <p>11 lots of discussions about how to book it from an</p> <p>12 operations perspective.</p> <p>13 Q. On page 21, 7721?</p> <p>14 A. Uh-huh.</p> <p>15 Q. There's an e-mail at the middle of</p> <p>16 that page from Beatrice Montaudy to Mark Rudduck</p> <p>17 and others. You're not shown as a copy on that</p> <p>18 e-mail, but it's an e-mail that gets forward to</p> <p>19 you, do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. In the first full paragraph of that</p> <p>22 e-mail, there's a question about the valuation</p> <p>23 calculation that the "discount" between the</p> <p>24 value of the assets acquired and the purchase</p> <p>25 price not be subject to 46 percent marginal U.S.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 tax rate, do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you have any discussions with</p> <p>5 anyone at any time in connection with the</p> <p>6 Lehman/Barclays transaction about a discount?</p> <p>7 A. No. I don't have a clue what that</p> <p>8 even means.</p> <p>9 Q. A couple paragraphs down, there's a</p> <p>10 paragraph in that same e-mail, there's a</p> <p>11 paragraph that begins "U.S. tax," do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. The last sentence of that paragraph</p> <p>15 states, "The gain on the equities is, Day 1, 2.5</p> <p>16 billion U.S. dollars," do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you have any discussions with</p> <p>19 anyone about there being a \$2.5 billion gain on</p> <p>20 the equities positions on day one?</p> <p>21 A. No.</p> <p>22 Q. And do you recall there being any</p> <p>23 discussions on the 18th/19th that you were part</p> <p>24 of where particular collateral or assets that</p> <p>25 were coming in from the Fed were being allocated</p>

Page 62	Page 63
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 to particular operating entities?</p> <p>3 A. No. On day one in September?</p> <p>4 Q. Yes.</p> <p>5 A. No.</p> <p>6 Q. After day one was there some effort to</p> <p>7 reallocate the collateral that had been</p> <p>8 transferred over?</p> <p>9 A. No. December when we did the Chase</p> <p>10 settlement, that was the first time I was under</p> <p>11 the understanding that there was other entities</p> <p>12 potentially going to be involved.</p> <p>13 Q. And in December what entities do you</p> <p>14 recall being involved in the transfer?</p> <p>15 A. The Long Island entity here.</p> <p>16 Q. Okay.</p> <p>17 A. And there was another entity as well.</p> <p>18 Q. And is there a particular Barclays</p> <p>19 entity name that you associate with the Long</p> <p>20 Island entity? Is it Barclays Capital? Some</p> <p>21 LLC?</p> <p>22 A. I just called it Long Island entity.</p> <p>23 We called it LIL, Long Island.</p> <p>24 Q. Okay. In the settlement in December,</p> <p>25 you said there was a list of collateral that you</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 were discussing; is that right?</p> <p>3 A. In December?</p> <p>4 Q. Yes, in December.</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. After the settlement agreement</p> <p>7 was done in December, did you review the</p> <p>8 collateral that was actually transferred over</p> <p>9 against that list that you had been working</p> <p>10 with?</p> <p>11 A. Personally, no.</p> <p>12 Q. Do you know if that was done?</p> <p>13 A. We booked trades to take in that</p> <p>14 collateral, so we would have reconciled what</p> <p>15 came in versus what we have in our systems. To</p> <p>16 the extent that there were differences, we would</p> <p>17 have reconciled them and so forth, but the job,</p> <p>18 my job was to make sure that we got in all the</p> <p>19 securities that were on the list that we had</p> <p>20 been agreed upon to make sure they settled in</p> <p>21 the right depots.</p> <p>22 Q. Did all of those securities that were</p> <p>23 on the list make it over?</p> <p>24 A. Yes. Yeah.</p> <p>25 Q. And you also got transferred to you</p>
Page 64	Page 65
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 securities that were not on that list, correct?</p> <p>3 A. Not in December, no.</p> <p>4 Q. When?</p> <p>5 A. Which one? What are we --</p> <p>6 Q. After December? There was a transfer</p> <p>7 of securities in September. Put that aside.</p> <p>8 A. Okay.</p> <p>9 Q. We move to December. In December</p> <p>10 there's a list of securities that's the subject</p> <p>11 of the settlement agreement.</p> <p>12 A. Correct.</p> <p>13 Q. Those are going to be transferred</p> <p>14 over. Those do get transferred over, correct?</p> <p>15 A. Correct.</p> <p>16 Q. In and after December, are there</p> <p>17 additional securities that get transferred over?</p> <p>18 A. Not that I'm aware of.</p> <p>19 MR. TAMBE: I don't have any further</p> <p>20 questions. Thank you.</p> <p>21 MR. ROTHMAN: I'll ask a few. Take a</p> <p>22 five-minute break.</p> <p>23 (Recess; Time Noted: 11:04 A.M.)</p> <p>24 (Time Noted: 11:21 A.M.)</p> <p>25 EXAMINATION BY</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 BY MR. ROTHMAN:</p> <p>3 Q. Good morning, Mr. Rodefeld. My name</p> <p>4 is Seth Rothman. I'm from Hughes, Hubbard &</p> <p>5 Reed. We represent the SIPA Trustee.</p> <p>6 A. Okay.</p> <p>7 Q. I'd like to start by marking as an</p> <p>8 exhibit an e-mail string with the Bates No.</p> <p>9 00048037. That will be number 284A.</p> <p>10 (Exhibit 284A, a document bearing</p> <p>11 Bates Nos. BCI-EX-(S)-48037 through 48038,</p> <p>12 marked for identification, as of this date.)</p> <p>13 (Document review.)</p> <p>14 A. Okay.</p> <p>15 Q. Your copy of the document is actually</p> <p>16 double-sided.</p> <p>17 A. Yes, I saw the back.</p> <p>18 Q. Okay. Good.</p> <p>19 A. Thank you.</p> <p>20 Q. I just wanted to make that clear.</p> <p>21 This is an e-mail from -- the top</p> <p>22 e-mail is from Michelle Turner to you on Friday,</p> <p>23 September 19; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Who is Michelle Turner?</p>

Page 66	Page 67
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. She is an operations manager that ran</p> <p>3 the Cash Management Team at Barclays Capital.</p> <p>4 Q. Do you recall receiving this e-mail</p> <p>5 from Ms. Turner?</p> <p>6 A. Not particularly, no.</p> <p>7 Q. At the bottom of the string, she</p> <p>8 forwards an announcement from Citibank, CLS</p> <p>9 Services, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What are the CLS Services?</p> <p>12 A. That is the FX netting that gets done</p> <p>13 by a facility called CLS, which is continuous</p> <p>14 link settlement, where it's a market facility</p> <p>15 that takes the -- all the FX trades with the</p> <p>16 dealers and nets them down and all the</p> <p>17 participants within it and creates a net amount</p> <p>18 per currency that each dealer has to settle upon</p> <p>19 as opposed to moving hundreds and thousands of</p> <p>20 payments individually.</p> <p>21 Q. And "FX" refers to foreign exchange?</p> <p>22 A. That's correct.</p> <p>23 Q. Did Barclays have a foreign exchange</p> <p>24 business?</p> <p>25 A. Yes, it did.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. And were you involved --</p> <p>3 A. Not Barclays Capital, no. Barclays,</p> <p>4 PLC.</p> <p>5 Q. Were you involved in that business at</p> <p>6 all? This is now prior to the sale transaction</p> <p>7 with Lehman.</p> <p>8 A. Very, very limited. Most of the</p> <p>9 processing and the operations for all our FX</p> <p>10 business was in London and Singapore. So only</p> <p>11 to the extent there might be some support people</p> <p>12 on the desk that would come in to me.</p> <p>13 Q. Okay. You write back to Ms. Turner,</p> <p>14 "We are not taking the FX business from Lehman."</p> <p>15 A. Correct.</p> <p>16 Q. How did you know that?</p> <p>17 A. I don't recall, other than the fact</p> <p>18 that I must have asked somewhere along the line</p> <p>19 to say, you know, are we taking any position in</p> <p>20 the FX, long and -- that's what I'm surmising</p> <p>21 from this. I don't remember, you know, why I</p> <p>22 asked. I'm sure I asked it about all the</p> <p>23 product asset classes that would have been out</p> <p>24 there on the Lehman entities.</p> <p>25 Q. And you think that because it relates</p>
Page 68	Page 69
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 to the job you were doing in operations?</p> <p>3 A. Oh, I'm sure it would have been</p> <p>4 related to do we need to worry about any</p> <p>5 processing of the FX support.</p> <p>6 Q. Did anybody at Barclays give you a</p> <p>7 rundown or a summary of which businesses you</p> <p>8 were taking from Lehman and which you were not?</p> <p>9 A. Nothing on a -- I have not received</p> <p>10 anything formally from anybody.</p> <p>11 Q. You didn't read anything?</p> <p>12 A. I don't recall like a list that says</p> <p>13 we're taking this, not taking this, nothing like</p> <p>14 that.</p> <p>15 Q. So you don't really know --</p> <p>16 A. I don't know what context I was</p> <p>17 sending this other than the fact that, you know,</p> <p>18 she was passing on information related to CLS,</p> <p>19 and because we weren't taking the FX business, I</p> <p>20 was communicating to her that it shouldn't be an</p> <p>21 issue, that they're not -- that CLS is shutting</p> <p>22 down on the Lehman side because we weren't doing</p> <p>23 their FX business.</p> <p>24 Q. But you don't recall how it is you</p> <p>25 learned that Barclays was not taking the FX</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 business from Lehman?</p> <p>3 A. No, I don't recall that.</p> <p>4 Q. The second sentence of your e-mail,</p> <p>5 you say, you write, "Suspect we will cherrypick</p> <p>6 the better sales and traders." Are you</p> <p>7 referring there to the FX business?</p> <p>8 A. I'm sure I must have been, just</p> <p>9 thinking along those -- just from reading it at</p> <p>10 face value, that's what I would have probably</p> <p>11 just surmised. No fact or based on fact, just</p> <p>12 chatter.</p> <p>13 Q. Put that exhibit aside. Let's go back</p> <p>14 to a new topic now -- actually, an old topic,</p> <p>15 the repo transaction that you testified about</p> <p>16 this morning that took place on Thursday where</p> <p>17 Barclays replaced the Fed.</p> <p>18 A. Right.</p> <p>19 Q. And I think by Friday you said that</p> <p>20 you had received certain collateral had come in</p> <p>21 to the Bank of New York; is that right?</p> <p>22 A. On Friday, you're saying, or Thursday?</p> <p>23 Q. That Thursday night into Friday</p> <p>24 morning, but by Friday morning you had received</p> <p>25 certain collateral?</p>

Page 70	Page 71
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Correct.</p> <p>3 Q. So you had approximately \$42 billion</p> <p>4 in securities?</p> <p>5 A. Based on Bank of New York's marks.</p> <p>6 Q. Right. And you had 7 billion in cash?</p> <p>7 A. Correct.</p> <p>8 Q. And then there was another 1.1 billion</p> <p>9 you said that came in on Friday, but you weren't</p> <p>10 sure if that related to the repo or not, is that</p> <p>11 fair?</p> <p>12 A. That's accurate.</p> <p>13 Q. Okay. How are you mechanically</p> <p>14 getting this information? Is there a system</p> <p>15 that you look at? Do you get a report from the</p> <p>16 Bank of New York?</p> <p>17 A. I don't get a report. There may be a</p> <p>18 report that's driven. I don't know enough about</p> <p>19 the mechanics of the 855 account at DTC whether</p> <p>20 they produce something. Typically, I wouldn't</p> <p>21 care because I would have my own books and</p> <p>22 records to rely on.</p> <p>23 So what happens at the 855 reporting</p> <p>24 through Bank of New York, I don't know what they</p> <p>25 do, if they -- how they handle that account. I</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 just don't know enough about that account.</p> <p>3 Q. How do you learn that there's \$42</p> <p>4 billion in securities that have made their way</p> <p>5 to the Bank of New York account?</p> <p>6 A. It was all verbal over the box coming</p> <p>7 from Bank of New York as assets were coming into</p> <p>8 the account.</p> <p>9 Q. Okay. And is your group then</p> <p>10 responsible for determining where those assets</p> <p>11 go next?</p> <p>12 A. Yes. Yeah.</p> <p>13 Q. Okay. And do you know what happened</p> <p>14 to that 42 billion in securities?</p> <p>15 A. Yes.</p> <p>16 Q. What happened to it?</p> <p>17 A. We executed trades against them,</p> <p>18 actual outright trades, and then we moved them</p> <p>19 out of that location into our proprietary</p> <p>20 accounts since we purchased them outright. So</p> <p>21 they would go into our normal DTC or Fed BAU</p> <p>22 accounts.</p> <p>23 Q. When you say you purchased them</p> <p>24 outright, what are you referring to?</p> <p>25 A. We purchased those assets, a series of</p>
Page 72	Page 73
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 assets. The location of those assets were</p> <p>3 sitting at -- in my 855 account, which was a</p> <p>4 location just to put those securities. We then</p> <p>5 took them out of the 855 DTC account at Bank of</p> <p>6 New York to our proprietary Barclays accounts at</p> <p>7 DTC.</p> <p>8 Q. Okay.</p> <p>9 A. Because they become -- once we</p> <p>10 purchase them outright, they became part of our</p> <p>11 normal box positions.</p> <p>12 Q. When you say you purchased them</p> <p>13 outright, are you referring to the sale</p> <p>14 transaction with Lehman?</p> <p>15 A. The -- I don't know the terminology</p> <p>16 you're using. What I do know is we booked</p> <p>17 transactions to buy those securities from</p> <p>18 Lehman. Those trades that were booked in our</p> <p>19 systems had securities that were in the 855</p> <p>20 account.</p> <p>21 Mechanically, I have a trade in my</p> <p>22 system saying you have purchased securities from</p> <p>23 Lehman. You have a location at 855. From a</p> <p>24 mechanical point of view, I just move the</p> <p>25 securities from the 855 account into my</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 propriety account to settle that transaction</p> <p>3 since we have purchased them outright from</p> <p>4 Lehman.</p> <p>5 Q. What's the basis of your understanding</p> <p>6 that you have purchased them outright from</p> <p>7 Lehman? Did somebody tell you? Did you read it</p> <p>8 somewhere?</p> <p>9 A. No, transactions are booked in our</p> <p>10 trade capture systems by traders.</p> <p>11 Q. So you can tell from the system?</p> <p>12 A. The front office system feeds our</p> <p>13 settlement system, which says, okay, we've done</p> <p>14 a purchase of securities and we knew that the</p> <p>15 securities that we were purchasing from Lehman,</p> <p>16 we knew where the location was because the day</p> <p>17 before they were all put into that account, or</p> <p>18 two days before, whatever the date they actually</p> <p>19 came in.</p> <p>20 Q. Okay. Now, are you also tracking the</p> <p>21 \$7 billion in cash collateral?</p> <p>22 A. Yes.</p> <p>23 Q. And what happens to that \$7 billion in</p> <p>24 cash?</p> <p>25 A. First, we requested that 7 billion on</p>

Page 74

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Friday through our normal course of business.
3 We asked Chase to put it into our -- I believe
4 into our DDA account at Chase. That didn't
5 happen. We got a statement that day showing
6 that we had the tri-party outstanding, so we
7 were comfortable.
8 Monday we got another statement from
9 Chase saying the 7 billion is still in the
10 tri-party account. We were comfortable. We
11 asked them again to move it out to Barclays'
12 account, and then sometime after that it became
13 evident that Chase wasn't releasing that 7
14 billion back to us immediately, and that's when
15 we escalated it up the ranks to the management
16 line.
17 **Q. Is Barclays purchasing the 7 billion**
18 **in cash the same way it's purchasing the 42**
19 **billion in securities?**
20 MR. SHAW: Objection to form.
21 You can answer.
22 **Q. You can answer, if you understand.**
23 A. I don't know what the assets they were
24 purchasing.
25 **Q. Okay. But with respect to the cash,**

Page 76

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 three- or four-week period from September 22nd,
3 I believe, through the three or four weeks.
4 The reason it took so long to book all
5 those trades, normally you would do that pretty
6 quickly, but we didn't have a lot of those
7 instruments set up in our databases since we
8 weren't trading them. So the back-end process
9 of getting the instruments set up in the system,
10 making sure you can process trades for them,
11 making sure you have all the information you
12 need to set up the instrument, probably 70
13 percent of those instruments were easily set up
14 in our security database. Then there were other
15 instruments that just took longer.
16 So, until you get that instrument,
17 that's the starting point. It has to be in our
18 instrument database so you can book a trade
19 against it. So there was a lag time between the
20 9/22 until we finally finished booking all the
21 trades.
22 **Q. When you say "all the trades," you're**
23 **including both the securities that made up the**
24 **42 billion in securities that transferred on**
25 **Thursday and also the 1.1 billion that**

Page 75

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 do you also see in your system whether it's been
3 purchased or not?
4 A. No. It sits out there as a tri-party
5 trade. So it's a financing trade, but for
6 technical purposes, that's the only way it goes
7 into the system as tri-party.
8 **Q. How about the \$1.1 billion in**
9 **securities that you told us was transferred on**
10 **Friday?**
11 A. Right.
12 **Q. Did you know what happened to those**
13 **securities?**
14 A. They got -- they were commingled with
15 all the other securities into the 855 account
16 and they just sat there and became part of that
17 portfolio that we took in from Thursday and
18 Friday.
19 **Q. And did your system show that Barclays**
20 **had purchased those securities?**
21 A. At some point later on, yes, when they
22 booked the trades into the system showing that
23 they bought them outright.
24 **Q. When did that occur?**
25 A. That occurred over a, probably a

Page 77

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 transferred on Friday, is that fair?
3 A. It was the full population that was in
4 the 855 account, correct.
5 **Q. And is it fair that -- just so I**
6 **understand what you're telling me, you see in**
7 **your system that it's been purchased and that's**
8 **the basis for why you say Barclays bought these**
9 **outright, but you don't have any independent**
10 **understanding based on any of the deal documents**
11 **or --**
12 A. I wasn't part of any -- the
13 negotiations or any part of the deal at all
14 other than the settlement aspects.
15 **Q. I'm going to mark as 285, Exhibit**
16 **285A, an e-mail from you to Gerard LaRocca.**
17 **It's Bates-stamped 49066.**
18 **(Exhibit 285A, a document bearing**
19 **Bates Nos. BCI-EX-(S)-49066, marked for**
20 **identification, as of this date.)**
21 **(Document review.)**
22 A. Okay.
23 **Q. This e-mail is an e-mail that you send**
24 **to Mr. LaRocca on Wednesday, September 24,**
25 **correct?**

Page 78

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 A. Uh-huh.
3 Q. You need to answer out loud.
4 A. Oh, sorry. Yes.
5 Q. So this is now in the middle of the
6 next week after --
7 A. Correct.
8 Q. -- the repo transaction?
9 MR. SHAW: Actually, I would point out
10 that this appears to be sent Tuesday night.
11 We've got that GMT problem.
12 MR. ROTHMAN: Fair enough.
13 Q. Do you recall sending this e-mail to
14 Mr. LaRocca?
15 A. Not particularly.
16 Q. You write, "Rich was looking for the
17 market value and confirmation of the securities
18 we received on Friday from Lehman as part of the
19 1.9 billion they were going to post."
20 Who is Rich?
21 A. I don't know, but it could be Rich
22 Ricci or it could be another Rich. I just don't
23 remember.
24 Q. And you write, "On Friday we received
25 collateral worth 1.077 million."

Page 80

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 862 million?
3 A. That's what I would recollect based on
4 this e-mail, yes.
5 Q. Okay. And then you say that the
6 reason is because DTC put the block on the
7 account?
8 A. Correct.
9 Q. What happened with respect to that?
10 A. Friday morning, the market opens up.
11 DTC has accounts that are open at -- Lehman has
12 accounts that have opened at DTC at that point
13 in time, so they started delivering me assets.
14 I took those assets, and then a point in time
15 came where DTC stopped allowing Lehman to use
16 that account so they put a block on it, whatever
17 terminology. I don't know if that's the formal
18 terminology, but they basically were not
19 allowing Lehman to move any more collateral out
20 of that account.
21 Q. Did you know why DTC was doing that?
22 A. I had no idea at that point what was
23 causing that.
24 Q. Did you find out later?
25 A. Later I found out that they declared

Page 79

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 A. Correct.
3 Q. Is that the 1.1 million we've been
4 talking about?
5 A. That was received on the Friday.
6 Q. Correct.
7 A. Correct.
8 Q. That's the same --
9 A. I -- yes, if it's on Friday we
10 received the collateral worth, that would be the
11 same collateral. That was the only collateral
12 we received on that Friday.
13 Q. Okay. And then you refer to a
14 schedule with a list of another 990 unique
15 issues?
16 A. Uh-huh.
17 Q. What does that mean, "unique issues"?
18 A. Individual issues. We had a schedule
19 that Lehman had sent us saying they were going
20 to deliver us these securities, but we didn't
21 get them all. So this is -- I'm just
22 referencing the fact that we didn't get
23 everything that was on the schedule.
24 Q. So you were supposed to get another
25 990 individual securities with a market value of

Page 81

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 bankruptcy, I think it was on that Friday, but
3 I'm not a hundred percent sure. But that's
4 probably what I recollected happened at the
5 time, but I'm not a hundred percent certain.
6 But I would assume that would have been the
7 reason why the DTC stopped them.
8 Q. Did you hear from anybody that that
9 was the reason?
10 A. I don't remember.
11 Q. Did you read any --
12 A. I don't know the reason other than the
13 fact that I remember that there was a bankruptcy
14 that day, and it would have seemed logical sense
15 that DTC would have put a stop on it until they
16 could figure out where they were at. That would
17 have been my best guess of what I...
18 Q. Okay. So, as of that Friday, Barclays
19 has collateral now of 49, approximately \$49
20 billion, consisting of the 42 billion in
21 securities and the 7 billion in cash; is that
22 right.
23 A. Based on Bank of New York's
24 valuations.
25 Q. Right.

Page 82	Page 83
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Yes.</p> <p>3 Q. Why is Lehman posting an additional</p> <p>4 1.9 billion on Friday or intending to post an</p> <p>5 additional 1.9 billion on Friday? Do you know?</p> <p>6 MR. SHAW: Objection. Foundation.</p> <p>7 A. I don't know why they posted it at</p> <p>8 that point in time on Friday morning. I just</p> <p>9 took the collateral.</p> <p>10 Q. Okay. But your understanding was that</p> <p>11 Barclays was supposed to have approximately \$49</p> <p>12 billion in collateral, correct?</p> <p>13 A. Barclays was supposed to have</p> <p>14 approximately 49-point-something billion dollars</p> <p>15 worth of collateral. We had no way to validate</p> <p>16 what the real valuation was of that collateral</p> <p>17 other than what Bank of New York was telling us.</p> <p>18 Q. Do you know whether the 1.9 billion</p> <p>19 was intended to replace some of the cash?</p> <p>20 A. At that point in time, I had no idea</p> <p>21 what it was going to replace, the cash or what</p> <p>22 the -- I was just told take it in.</p> <p>23 Q. Did at some later point in time you</p> <p>24 gain an understanding as to what that 1.9</p> <p>25 billion was supposed to do?</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Much later on. Not up until during</p> <p>3 the period that we were purchasing the assets.</p> <p>4 Somewhere subsequent to that, I was never really</p> <p>5 sure whether it was related to the collateral on</p> <p>6 the repo or the purchase of the unencumbered</p> <p>7 assets. Because to me it was a block of assets.</p> <p>8 I didn't distinguish between the repo versus the</p> <p>9 unencumbered assets for my purposes because it</p> <p>10 didn't matter to me.</p> <p>11 Q. You said much later in time. Are you</p> <p>12 thinking about a particular conversation that</p> <p>13 you had with someone?</p> <p>14 A. No, I just know that somewhere down</p> <p>15 months later when we just, you know, probably</p> <p>16 had general conversations on it, that's when it</p> <p>17 probably came out. I can't say on a particular</p> <p>18 time or date or anything like that. I just know</p> <p>19 later on, you know, there was discussions about</p> <p>20 it.</p> <p>21 Q. Do you recall who you had those</p> <p>22 discussions with?</p> <p>23 A. No, just general conversations with</p> <p>24 somebody. I just don't know. I just know</p> <p>25 that -- I recollect that there were</p>
Page 84	Page 85
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 conversations on it.</p> <p>3 Q. Conversations with people at Barclays?</p> <p>4 A. Could have been Barclays or Lehman. I</p> <p>5 don't remember, to be honest. It could have</p> <p>6 been just rehashing it with Lehman people for --</p> <p>7 I just don't remember. I just know that</p> <p>8 somewhere I had a conversation on it.</p> <p>9 Q. When you say "Lehman people," are you</p> <p>10 talking about --</p> <p>11 A. Ex-Lehman legacy people from the -- it</p> <p>12 could have easily been any one of them. I just</p> <p>13 don't recall.</p> <p>14 Q. Can you recall about when you had</p> <p>15 these discussions?</p> <p>16 A. I just know it was probably much later</p> <p>17 on, you know, only to the fact that I really</p> <p>18 wasn't focused on the population as much in</p> <p>19 terms of, you know, the reasons as to making</p> <p>20 accounting for it, making sure the trades were</p> <p>21 booked, the trades were settled, securities were</p> <p>22 moved. That was my focus.</p> <p>23 Q. When you say "much later on," do you</p> <p>24 think this was a couple of weeks later or a</p> <p>25 couple of months later?</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. It was probably more months later.</p> <p>3 Q. The e-mail, just to clarify one thing</p> <p>4 in the e-mail, you write that, "On Friday, we</p> <p>5 received collateral worth 1.0077 million." Did</p> <p>6 you mean billion when you wrote that?</p> <p>7 A. Yeah. I was getting a little punchy,</p> <p>8 I guess. Yeah, it was clearly a billion.</p> <p>9 Q. And why are you passing this</p> <p>10 information along to Mr. LaRocca? Do you</p> <p>11 recall?</p> <p>12 A. Not particularly, no.</p> <p>13 Q. I'm going to mark 286A, another</p> <p>14 e-mail. This one is double-sided,</p> <p>15 Bates-numbered 49165 to 49166.</p> <p>16 (Exhibit 286A, a document bearing</p> <p>17 Bates Nos. 49165 through 49166, marked for</p> <p>18 identification, as of this date.)</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. The top e-mail is from you to a</p> <p>22 Stephen Sell?</p> <p>23 A. Right.</p> <p>24 Q. Who is Mr. Sell?</p> <p>25 A. Stephen is a business manager for the</p>

Page 86

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 trading floor.
3 Q. And if you go down to the bottom of
4 the first page, he notes to you and a number of
5 other people, "It appears we have received some
6 additional assets yesterday from LEH," which is
7 Lehman, correct?
8 A. Right.
9 Q. "PMTG would like to book these into a
10 PMTG book as soon as possible."
11 What is PMTG?
12 A. It's the Private Mortgage Trading
13 Group. It's a trading desk on the floor of our,
14 what was then 200 Park Avenue.
15 Q. And then you write back to Jasen Yang.
16 Who is Jasen Yang?
17 A. Jasen's a trader on the PMTG desk.
18 Q. And you say that you're aware of the
19 schedule attached and that you were told that
20 the 862 million plus the 301 million assets did
21 not come in on Friday and failed when the DTC
22 shut down the Lehman pipes.
23 Does the 862 million refer to the 990
24 unique issues that we were just talking about?
25 A. I don't know that to be certain, but

Page 88

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 billion that was transferred, this is a
3 different --
4 A. I don't know that to be the fact, but
5 based on the writing of this, it's saying it
6 didn't come in on Friday. So I would -- without
7 factually knowing for certain, I can make, you
8 know, some logical assumptions, but I don't know
9 that to be the fact.
10 Q. Okay. And in the e-mail above that,
11 Mr. Yang says, writes to you, "Actually, I
12 suppose nobody's told me that, except that there
13 seems to be a widely held assumption that they
14 were delivered. Did any assets make it in
15 except the financing?"
16 Do you know what he meant by that?
17 MR. SHAW: Objection. Foundation.
18 A. No, I'm not sure what he was
19 talking -- you know, my only, the reason my
20 response to that, "that is why I'm concerned,"
21 is just that what information is passing around,
22 is everybody working off of the same
23 information. That's the only thing I can
24 rationalize, just to say let's all make sure we
25 all have the same information.

Page 87

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 it's possible. It's more than likely, given
3 it's in this context, but I just don't have
4 specific recollection. But it, you know, that
5 would be, you know, the logical place you would
6 think it is.
7 Q. And do you recall what the 301 million
8 assets refers to?
9 A. No. What they could have been is I
10 think they were coming from two different DTC
11 accounts, I believe, and one might have been 862
12 in one account and 301 may have been in another
13 account. I don't recollect, but that would
14 probably be the reason why I split it out into
15 the two.
16 Q. Okay. And --
17 A. Or because of the location of the
18 securities rather than anything else.
19 Q. And those two pools of assets are
20 separate from the 1.1 billion that you did get
21 that Friday?
22 MR. SHAW: Objection to form.
23 A. I'm not sure I understand the
24 question.
25 Q. The 301 million isn't part of the 1.1

Page 89

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 When he makes reference he didn't
3 know, you know, that's just what I thought or
4 something like that. That's why I said we need
5 to -- we can't just throw around numbers.
6 That's all.
7 Q. Okay. Did there come a time over the
8 weekend of September 20th and 21st where people
9 from Barclays went to the DTCC's offices?
10 MR. SHAW: Objection. Foundation.
11 A. I don't know for certain. I just
12 wasn't privy to that, and I know it wasn't me,
13 so if -- there might have been people that have
14 gone there that I'm unaware of, but I didn't go
15 to the DTC offices.
16 Q. Did you hear anything about Barclays
17 going to inspect the positions in Lehman's DTC
18 accounts?
19 A. I don't recall. It could have been.
20 I just don't recall during that period of time.
21 I don't know what -- I don't know what would
22 have been the benefit enough to say why, you
23 know, it would have been a critical business
24 need or not. It just doesn't -- I just don't
25 recall.

Page 90	Page 91
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Were you talking to John Haley over</p> <p>3 that weekend?</p> <p>4 A. I'm certain I was. John and I spent a</p> <p>5 lot of time back and forth together.</p> <p>6 Q. Do you know if he had gone to the</p> <p>7 DTCC?</p> <p>8 A. I don't know that to be fact. He</p> <p>9 could have, but I just don't know that. You</p> <p>10 know, he might have. I just can't recall that,</p> <p>11 to be honest.</p> <p>12 Q. Did you hear anything over that</p> <p>13 weekend about whether Barclays was going to be</p> <p>14 purchasing unencumbered securities in the Lehman</p> <p>15 DTC accounts?</p> <p>16 A. Not over that weekend, no.</p> <p>17 Q. Did you hear that at a later point in</p> <p>18 time?</p> <p>19 A. Months later. This goes back to that</p> <p>20 earlier discussion we had where, you know, when</p> <p>21 they asked about the securities that came in on</p> <p>22 the 19th as unencumbered securities, somewhere</p> <p>23 along those lines months later, that's where I</p> <p>24 became aware that we were buying those actual</p> <p>25 securities.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. You told me before that the DTCC put a</p> <p>3 hold on the trading from the Lehman box that</p> <p>4 Friday?</p> <p>5 A. Yeah. Not trading from it, movements</p> <p>6 from it.</p> <p>7 Q. Thank you.</p> <p>8 Was that hold ever lifted, do you</p> <p>9 know?</p> <p>10 MR. SHAW: Objection. Foundation.</p> <p>11 A. I don't know to be certain, no, I</p> <p>12 don't know.</p> <p>13 Q. Do you know if Barclays had to take</p> <p>14 any actions to get that hold lifted?</p> <p>15 A. No, I don't know. There must have</p> <p>16 been. Well, let me qualify -- just restate that</p> <p>17 again. We received assets on the 29th and the</p> <p>18 30th. They may have come through that account,</p> <p>19 so they may have been under the control of</p> <p>20 either SIPC or DTC or some other body to release</p> <p>21 those securities to us.</p> <p>22 So I do know that at some point they</p> <p>23 may not have taken the block off, but they</p> <p>24 allowed securities to move through there because</p> <p>25 I do believe on the 29th and 30th they came to</p>
Page 92	Page 93
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 those accounts. So there must have been either</p> <p>3 an unblocking or some mechanism that allowed us</p> <p>4 to get those securities through there.</p> <p>5 Q. Do you know why Barclays was receiving</p> <p>6 securities from there on the 29th and the 30th?</p> <p>7 A. No, I don't.</p> <p>8 Q. Do you know whether those securities</p> <p>9 were part of the repo collateral?</p> <p>10 A. I don't know that. I didn't think</p> <p>11 about it in those terms.</p> <p>12 Q. Does your systems show -- would your</p> <p>13 systems show whether that was the case or not?</p> <p>14 A. No. Well, the only thing our systems</p> <p>15 will show is that we purchased securities. We</p> <p>16 didn't book any trades as financing trades on an</p> <p>17 individual basis. So we wouldn't reflect that.</p> <p>18 All you'd reflect is in the depot that you</p> <p>19 received collateral from Lehman.</p> <p>20 Once the trades were booked as</p> <p>21 outright trades, that's when we knew that,</p> <p>22 formal books and records, that we had trades and</p> <p>23 that we were looking for that collateral as</p> <p>24 proprietary positions now since we bought them</p> <p>25 outright.</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Okay. Let's go back to the weekend of</p> <p>3 September 20th and 21st. Did you hear anything</p> <p>4 about an agreement over that weekend involving</p> <p>5 Barclays, LBI and the DTCC?</p> <p>6 A. I don't understand the question.</p> <p>7 Q. Do you know if there was an agreement</p> <p>8 reached over that weekend between Barclays,</p> <p>9 Lehman Brothers and the DTCC?</p> <p>10 A. I don't know if there was agreements</p> <p>11 reached. There was dialogue about the clearing</p> <p>12 of the outstanding trades. I remember those --</p> <p>13 that dialogue, but I don't know if that was --</p> <p>14 there was -- I wasn't party to any agreement</p> <p>15 that was taking place at DTC or anything of that</p> <p>16 nature.</p> <p>17 Q. Were you involved in those dialogues?</p> <p>18 A. Yeah.</p> <p>19 Q. Where did they take place?</p> <p>20 A. They would have taken place at 745</p> <p>21 Seventh Avenue.</p> <p>22 Q. And who participated in these</p> <p>23 dialogues with you?</p> <p>24 A. I don't remember, but I -- I just</p> <p>25 don't remember. I would assume people in legal</p>

Page 94

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 or somebody of that nature.
3 Q. There was people there from --
4 A. Barclays. Barclays Capital.
5 Q. Is this just legal people at Barclays?
6 A. Barclays Capital. At this point, it
7 was Barclays legal people.
8 Q. Were there people from LBI or from the
9 Trustee?
10 A. There were LBI people on the floor.
11 Whether they were in those conversations, I
12 don't believe so.
13 Q. Are there people in those
14 conversations from the DTCC?
15 A. There were DTC folks on the calls,
16 right? And so there were discussions about, you
17 know, were we going to clear the trades on
18 behalf of LBI, the outstanding trades that
19 hadn't settled yet at the depositories. So
20 there were discussions, you know, and we were
21 saying we're not settling those trades, they're
22 not our trades.
23 That's the extent of what I remember
24 about that. I don't think there was any formal
25 agreements, though, other than the fact that we

Page 96

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 about DTCC bylaws when there's a default of any
3 sort.
4 Q. Is the DTC exposed, mechanically
5 exposed if a trade doesn't settle?
6 A. DTC is participant-owned. So DTC just
7 represents all the other participants. So, in
8 theory, if there's a loss at DTC, that is shared
9 amongst all the participants of DTC.
10 So, you know, if there is going to be
11 a, like in any kind of a corporate action where
12 DTC is involved in it, if there's a loss, it's
13 distributed out to all its members.
14 Q. Okay. So --
15 A. I'm not an expert on DTC bylaws, on
16 closeouts or bankruptcy or anything else like
17 that. I'm not an expert at all.
18 Q. So over the weekend of the 20th and
19 the 21st, you are, at least for some of the
20 time, up at the Lehman headquarters at 745
21 Seventh Avenue?
22 A. Correct.
23 Q. Why are you up there?
24 A. On the weekend of the 21st -- well, we
25 should start when I started going to the Lehman

Page 95

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 stated a position.
3 Q. What is it, when you say you weren't
4 going to settle the trades, what do you mean by
5 that?
6 A. So if Lehman sold securities to a
7 client and needed to make a delivery, we were
8 telling DTC we're not taking ownership of that
9 settlement process, that's Lehman's process. We
10 didn't -- we hadn't bought LBI at that point.
11 So, for our purposes, it's that why would we
12 take ownership of the settlement when we hadn't
13 taken ownership of those -- of the entity.
14 Q. Did DTCC express any concerns about
15 those settlements?
16 A. I don't know if they expressed
17 concern. They were looking for facts, right,
18 what we were doing.
19 Q. What happens if the settlement fails?
20 A. The trade doesn't just settle in the
21 system. The cash doesn't go one way. The
22 securities don't go another way.
23 Q. Does the DTCC guarantee the settlement
24 of those trades?
25 A. I don't know. I don't know enough

Page 97

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 offices, right? And I started taking up camp
3 there because I went up there on that Thursday
4 when there was started to be a lot of confusion
5 in the morning, late morning hours about that
6 first lot that we were sending over in cash and
7 the collateral, so I decided to go to the Lehman
8 offices to make sure I was closer to talking to
9 the folks that I needed to get a hold of rather
10 than by phone.
11 And so at that point there, once I had
12 taken an office on the 31st floor, it was just a
13 matter of convenience a lot of times just going
14 back and forth between the Seventh Avenue office
15 and the 200 Park Avenue office of mine, so I
16 just needed a place to have a PC and work from
17 both place, no more, no less.
18 Q. So at some point over the weekend
19 these discussions involving the DTCC people
20 begin. How do you get brought into those
21 discussions.
22 A. I don't remember how I was brought
23 into the discussions, but I just know that I was
24 part of the discussions when there was queries
25 about the outstanding trades that Lehman had

Page 98

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 against the rest of the industry.
3 **Q. Can you recall if somebody in**
4 **particular at Barclays asked you to join those**
5 **discussions?**
6 A. No, I -- logistically, I was on the
7 31st floor, so there was a lot of activity on
8 the 31st floor. So they saw a senior ops.
9 person, they probably said, John, come in, sit
10 here and, you know, be part of those
11 discussions.
12 So I don't know how I ended up dragged
13 into them, but I know that, you know, as a
14 senior ops. manager representing Barclays, I got
15 engaged in those conversations.
16 **Q. So when you had these conversations,**
17 **are you in somebody's office or are you in a**
18 **conference room? Where are you exactly?**
19 A. It was multiple offices, depending on
20 when the call came in and, you know, so forth on
21 the 31st floor. There were no assigned offices
22 on 31, so people would just jump in an office
23 and say I'm taking ownership today and work from
24 there. And then so it could have been I walked,
25 drifted into the office, somebody might have

Page 100

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 just know that I was on calls with DTC related
3 to the settlement, the settlements that -- the
4 trades that hadn't settled at DTC related to the
5 Lehman accounts and who was going to take
6 ownership of those settlements.
7 **Q. Did you ever go down to the offices at**
8 **Weil Gotshal and attend any meetings or**
9 **discussions there?**
10 A. Yes.
11 **Q. When did you do that?**
12 A. When it was, I believe, and I don't
13 have my dates right, but when we went to the
14 close the first time with Chase on the 7
15 billion, I was asked to participate in that
16 meeting at the General Motors Building when we
17 went to that first closing about the settlement
18 of the 7 billion and how that was going to get
19 distributed.
20 **Q. When did that occur?**
21 A. By Monday morning, 6, 7 o'clock in the
22 morning.
23 **Q. What Monday, the 22nd?**
24 A. No, it would have been the following
25 week, I believe.

Page 99

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 been on the phone and said, John, can you
3 understand what this guy's talking about or
4 something like that.
5 **Q. Are these Barclays people that are**
6 **using these offices or --**
7 A. They were Barclays people, but there
8 were some Lehman folks around. I just don't
9 know, you know, who was in what offices. But,
10 yeah.
11 **Q. And the people calling you into the**
12 **office to join the call, are those Barclays**
13 **people that are doing that or is it Lehman**
14 **people, or both?**
15 A. I don't remember, but more than likely
16 they were Barclays people.
17 **Q. And you don't recall who it was from**
18 **Barclays that was on these calls with you?**
19 A. No, and I don't even -- you know, you
20 know, I just don't recall. I mean, there could
21 have been Lehman operations people there as
22 well. Alastair Blackwell could have been there,
23 he might not have been there. The dates and the
24 times and the meetings almost become a blur.
25 So I don't remember specific calls. I

Page 101

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 **Q. Okay.**
3 A. Because we were still at the point on
4 the 22nd of thinking we had a tri-party for 7
5 billion with JPMorgan Chase, so the meeting at
6 Weil was the how do we settle the 7 billion the
7 first time prior to the next settlement that
8 took place in December.
9 **Q. So the first time would have been at**
10 **the end of September?**
11 A. Would have a date, right, that date,
12 whatever date. And it could have been first
13 part of October, I just lose track. Whatever
14 date that we decided to have that large meeting
15 with JPMorgan and several other interested
16 parties at that meeting.
17 **Q. Let's go back to the weekend of the**
18 **20th and the 21st. Did you go to the GM**
19 **Building to Weil's offices over that weekend?**
20 A. No.
21 **Q. Let me show you a copy of a letter**
22 **agreement that we previously marked as Exhibit**
23 **52. It's already been blessed.**
24 (Document review.)
25 A. Okay.

Page 102	Page 103
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Have you ever seen Exhibit 52 before?</p> <p>3 A. Yes.</p> <p>4 Q. When did you see it?</p> <p>5 A. I'm sure I saw it at the period of</p> <p>6 time in September or October -- September, I</p> <p>7 guess, only because it's to my attention, and I,</p> <p>8 you know, vaguely remember something about this,</p> <p>9 but nothing in particular. It just looks</p> <p>10 familiar, to be honest with you. I don't know</p> <p>11 why, it just looks familiar.</p> <p>12 Q. What, if anything, do you remember</p> <p>13 about it?</p> <p>14 A. Nothing. Absolutely zero.</p> <p>15 Q. Were you involved in negotiating this</p> <p>16 letter agreement?</p> <p>17 A. No. I don't even understand enough</p> <p>18 about it, to be honest, what it even means.</p> <p>19 Q. Did you attend any meetings where this</p> <p>20 letter agreement was discussed?</p> <p>21 A. Unless this was part of the meetings</p> <p>22 that we had over that weekend where there were</p> <p>23 discussions about, you know, the clearing of the</p> <p>24 securities, I may have participated in those</p> <p>25 meetings, and if that translated into this</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 document, you know, then -- then I was party to</p> <p>3 some of those meetings, yes.</p> <p>4 The fact that they put it to my</p> <p>5 attention, you know, because I was part of those</p> <p>6 meetings or because I was the head of ops., I</p> <p>7 don't recall, but it could have been one of</p> <p>8 those two reasons.</p> <p>9 Q. You don't know why it's to your</p> <p>10 attention?</p> <p>11 A. No, other than the fact that, as the</p> <p>12 head of ops., and as being party to those</p> <p>13 discussions with a number of these people at</p> <p>14 DTCC on that weekend, that's the only thing I</p> <p>15 can think of is why they put it to my attention.</p> <p>16 Q. Who at the DTCC did you talk to?</p> <p>17 A. Specifically, I didn't talk to</p> <p>18 anybody, you know, that I can recollect, but I</p> <p>19 know on the call was Larry Thompson, and I</p> <p>20 believe Don Donahue was probably on those calls</p> <p>21 as well. And there might have been other people</p> <p>22 in the room from DTCC. Those are the two names,</p> <p>23 you know, that I remember.</p> <p>24 Q. When you were on those calls, was</p> <p>25 there any consensus reached or resolution</p>
Page 104	Page 105
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 reached as to how the trades were going to be</p> <p>3 cleared?</p> <p>4 A. Not on the calls that I participated</p> <p>5 in, there was no agreements. There were</p> <p>6 discussions about the MBSCC, how we -- the</p> <p>7 governments and so forth, but there was no</p> <p>8 resolution, I don't believe, that I was on that</p> <p>9 says, okay, we're going to go in this direction</p> <p>10 and that's the formal agreement or anything like</p> <p>11 that. I don't recall that.</p> <p>12 Q. Is it fair to say that the only thing</p> <p>13 you do recall is what you told me before, is</p> <p>14 that Barclays was not going to be responsible</p> <p>15 for settling those trades?</p> <p>16 A. Right, that was the only thing that I</p> <p>17 remember that sticks out in my mind from those</p> <p>18 conversations. Because it was such a prominent</p> <p>19 point to DTCC and there was more than one</p> <p>20 conversation on that subject, so that's why I</p> <p>21 remember.</p> <p>22 I don't know if there were other</p> <p>23 reasons why we were on the call that might have</p> <p>24 been minor issues. There could have been. I</p> <p>25 just don't recollect. That was the only major</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 issue I remember, being who's going to own the</p> <p>3 future settlements of the outstanding trades.</p> <p>4 Q. Do you recall any discussions about</p> <p>5 whether Barclays would purchase any of the</p> <p>6 assets that were --</p> <p>7 A. No, nothing along those lines.</p> <p>8 Q. Did you hear any discussion about --</p> <p>9 A. It was more -- it was all operational</p> <p>10 in nature. Settlement purposes, not execution</p> <p>11 purposes.</p> <p>12 Q. Did you have an understanding that</p> <p>13 there were other discussions or meetings with</p> <p>14 the DTCC going on that you were not involved in?</p> <p>15 A. There may have been, yeah. I would</p> <p>16 assume that there were other discussions going</p> <p>17 on that I wasn't party to. I just don't know</p> <p>18 specifically what they were or anything.</p> <p>19 Q. If you take a look at the paragraph of</p> <p>20 the letter that's numbered number 1 that's in</p> <p>21 bold, "Winding Down of Accounts"?</p> <p>22 A. Yes.</p> <p>23 Q. The letter reads, "Barclays has</p> <p>24 indicated, and hereby agrees, that all of the</p> <p>25 accounts of LBI maintained at the clearing</p>

Page 106

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 agency's subsidiaries," and then in parentheses
3 it defines the accounts, "constitute 'excluded
4 assets' within the meaning of the APA."
5 A. Uh-huh.
6 Q. Did you hear any discussions about
7 whether the accounts of LBI maintained at the
8 clearing agency's subsidiaries would constitute
9 excluded assets within the meaning of the APA?
10 A. No, and in fact, I didn't even know
11 what "APA" even meant. I wasn't party to any of
12 the APA discussions, so -- and there was no
13 discussions in anything that I was aware of
14 about excluded assets.
15 Q. Did you hear anything about the court
16 hearing that took place on Friday evening?
17 A. Yeah.
18 Q. What did you hear?
19 A. Again, if this is the one where they
20 said that we could purchase Lehman, is that the
21 one -- I don't know. There was a court hearing,
22 I know, that was I guess when we were going to
23 make the payment for the assets, the building
24 and some of the other things.
25 So I believe there was a court hearing

Page 108

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 Q. About midway down the page.
3 A. Oh. Oh. Yes, okay.
4 Q. The letter reads, "In order to induce
5 DTCC to take the foregoing actions, Barclays
6 hereby agrees to guarantee, indemnify and hold
7 harmless DTCC and each of the clearing agency's
8 subsidiary and each of its, or their, officers,
9 directors, employees, owners, agents and
10 representatives against any and all losses,
11 claims, damages, expenses or liabilities that
12 any of them may incur as a result of winding
13 down and closing out the accounts, which
14 guarantee is limited to the cash deposit
15 described below."
16 And then if you look at the paragraph
17 just underneath, it defines the cash deposit as
18 \$250 million, do you see that?
19 A. Uh-huh.
20 Q. Do you recall any discussions
21 concerning a guarantee of \$250 million?
22 A. Seeing this now, I remember something
23 about \$250 million, but I don't put into context
24 why I remember it. It just looks familiar and
25 may have been a guarantee, and I just haven't

Page 107

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 to saying it had to be approved before we could
3 actually settle the -- and the only reason that
4 I would have been party to that is if I had to
5 make the money payment to settle the cash that
6 would have to go out the door to settle that.
7 So I was probably told that this is
8 waiting on a court settlement, so be available
9 if we need to wire cash out to satisfy the
10 purchase.
11 Q. Okay. I take it you didn't attend the
12 court hearing that took place?
13 A. No.
14 Q. And nobody gave you a summary of --
15 A. Nothing.
16 Q. -- or description of what happened
17 that the hearing?
18 A. My only interest in the court hearing
19 was to be on notice that I might have to wire a
20 large sum of cash out and that I had to
21 coordinate that since I had -- I was the senior
22 person that controlled the wires.
23 Q. Do you see in paragraph 2 of Exhibit
24 52 it says "guaranteed" in bold?
25 A. I'm sorry, where is that?

Page 109

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 recollect any reason why I know that. Just
3 numbers look familiar and guarantees and 250.
4 That's the reason, yeah, I'm sure there was --
5 it looks familiar, but I don't know why it looks
6 familiar.
7 Q. Would your group have been the group
8 that did the wire transfer that's mentioned
9 there?
10 A. At the end of the day, if there was
11 money going out the door, that size of money, I
12 would have been aware of it, and you know, the
13 reason somebody would have said, "John, make a
14 payment of \$250 million" and I would have
15 executed it. So, you know, there --
16 Q. Do you recall doing that?
17 A. No. There was a lot of big payments
18 going out at any given the time, and one versus
19 another doesn't ...
20 Q. Okay. You can put that agreement
21 aside. Let me show you what has been marked at
22 a prior deposition as Exhibit 83B. This is, for
23 the record, this is an e-mail from Stephen Sell
24 to a number of people, including you, and it's
25 got a Bates stamp of 6647. There's also an

Page 110

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 attachment to the e-mail.
3 A. Okay.
4 **Q. Do you recall receiving this e-mail**
5 **from Mr. Sell?**
6 A. Not specifically, but my name is on it
7 so I assume I received it.
8 **Q. Under the "redacted" stamp your name**
9 **is listed in three of the bullet points. Can**
10 **you -- these are open issues questions. Can you**
11 **walk me through those three bullet points and**
12 **tell me what it is that you were doing?**
13 A. Sure. The first one is a question
14 asking the positions that were done by Lehman
15 against the street, you know, were what I'm
16 assuming is forward positions, meaning they have
17 sold forward, that were executed by Lehman the
18 previous week prior to when they were still
19 operating as a functioning entity, asking
20 whether we were going to settle those trades.
21 We were taking on the forward positions, meaning
22 were we going to settle those trades. That's
23 the way I would read it.
24 **Q. Did you get an answer to that?**
25 A. I don't remember specifically other

Page 112

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 What that means is, many of these instruments we
3 didn't have in our settlement systems or our
4 front-end systems and that reference data needed
5 to be set up on them, and they were looking for
6 one particular person to drive the whole process
7 given the extent of the new issues we had to put
8 into our system to do it on a coordinated
9 fashion. And my assumption is I would have
10 found a senior dedicated person that would have
11 just monitored that piece of it so that it would
12 be fluid in terms of setting up those instrument
13 so we could book the trades.
14 **Q. You can put that exhibit aside.**
15 Let me just follow up briefly on
16 **Exhibit 52, which was the DTCC letter. Do you**
17 **recall how you received that, whether it was by**
18 **e-mail or by hand or some way?**
19 A. No, I don't.
20 **Q. Do you recall forwarding it on to**
21 **anybody else?**
22 A. I'm sure I would have given it to
23 Gerard LaRocca, asking him what should we do
24 with this.
25 **Q. And why Mr. LaRocca?**

Page 111

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 than the fact that we didn't take ownership of
3 them, so I don't remember about that particular
4 time if I got an answer on it or not.
5 Subsequent to that we knew we didn't settle any
6 forward trades, so that's what I recollect about
7 that. At the period of time, I don't remember.
8 The second one is what was the
9 contractual settlement date we were going to put
10 on those trades since we were buying them
11 outright, and we were looking for a date so if
12 we were going to book the trades into our trade
13 capture systems, what would be trade date, what
14 would be settlement date. So, obviously, the
15 settlement date being important for accrued
16 interest purposes and lots of other things, so
17 that there was a question there.
18 Subsequent to that, I believe we ended
19 up locking down that we were going to use 9/22
20 as the settlement date, formal contractual
21 settlement date, in our trade capture system.
22 So that would have been the second question.
23 And then the third one was more
24 mechanical: Can you provide an asset control
25 point person for setting up the securities?

Page 113

1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 A. Gerard was serving as the point person
3 on a lot of discussion. So, for my purposes,
4 any escalation in the U.S. that I felt that
5 needed to go -- and Carole was in the UK, as my
6 global head, but on a regional basis, I was
7 facing off to Gerard for any escalation issues,
8 and then Gerard would take it to where he needed
9 to take it to in the organization.
10 **Q. Okay.**
11 A. That was just a chain of command for
12 me.
13 **Q. Just so I understand your answer,**
14 **you're assuming you would have given it to**
15 **Gerard. You don't have any independent**
16 **recollection of actually doing that?**
17 A. He would have been the only person I
18 would have given a document of that type to.
19 There's nobody else -- below me, I wouldn't have
20 given it to me below me, and I was head of U.S.
21 Ops., and the person right above me was Gerard.
22 So, from a logical perspective, he would be the
23 person I would give it to, if anybody, if I got
24 it. And there would have been nobody else that
25 I would have given it to.

Page 114	Page 115
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. And you don't recall any discussions</p> <p>3 with him regarding the --</p> <p>4 A. Not specifically on it. The document</p> <p>5 looks familiar. Why, I don't know. I think it</p> <p>6 was because they put director of operations</p> <p>7 rather than my title. I think maybe that</p> <p>8 annoyed me a little. It's probably more</p> <p>9 political than practical.</p> <p>10 Q. You mentioned earlier this morning</p> <p>11 that there was a list of the collateral that you</p> <p>12 were receiving for the repo, you recall that?</p> <p>13 A. I'm sorry, what specific -- what</p> <p>14 population are we talking about?</p> <p>15 Q. If we go back to the repo on Thursday</p> <p>16 where Barclays took out the Fed.</p> <p>17 A. Barclays received collateral on</p> <p>18 Thursday, correct.</p> <p>19 Q. You said at some point Barclays got a</p> <p>20 list, and I think you said you really -- you</p> <p>21 knew there was a list, but you didn't really</p> <p>22 have much to --</p> <p>23 A. On Tuesday.</p> <p>24 Q. -- do with it.</p> <p>25 Was that on Tuesday?</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Which list? Just clarify for me which</p> <p>3 list we're talking about. There were a number</p> <p>4 of different lists.</p> <p>5 Q. Did you ever get a list of the \$42</p> <p>6 billion in securities -- strike that. Did you</p> <p>7 ever get a list of the collateral that was</p> <p>8 supposed to move to Barclays to secure the \$45</p> <p>9 million repo loan?</p> <p>10 A. There was a couple of things. I got a</p> <p>11 list of what we received from Bank of New York</p> <p>12 recently relating to some subpoenas, I believe,</p> <p>13 or some requests for data. So I did get a list</p> <p>14 then.</p> <p>15 Back in September, did I get a list?</p> <p>16 Personally, I probably did not get a list.</p> <p>17 There wouldn't have been a need to give me a</p> <p>18 list. I wouldn't have known what to do with it</p> <p>19 if they had given me a list. It probably would</p> <p>20 have been an extensive list. So could someone</p> <p>21 have sent me a list, hard copy or e-mail?</p> <p>22 Possibly. I just don't recall.</p> <p>23 Q. Okay. I'm going to mark as the next</p> <p>24 exhibit an e-mail string, again double-sided.</p> <p>25 Bates number on the first page is 49591 and it's</p>
Page 116	Page 117
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 from Carole Machell to you.</p> <p>3 (Exhibit 297A, a document bearing</p> <p>4 Bates Nos. BCI-EX-(S)-49591 through 49592,</p> <p>5 marked for identification, as of this date.)</p> <p>6 (Document review.)</p> <p>7 A. Okay.</p> <p>8 Q. Does this e-mail refer to the</p> <p>9 transfers that we've discussed on September 29</p> <p>10 and 30?</p> <p>11 A. They look to be, yeah.</p> <p>12 Q. Okay. If you take a look at the</p> <p>13 earliest e-mail in the string, it's from Neal</p> <p>14 Ullman?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you know who Neal Ullman is?</p> <p>17 A. Yes.</p> <p>18 Q. Who is he?</p> <p>19 A. Neal Ullman is a managing director</p> <p>20 previously at Lehman who was responsible for</p> <p>21 most of the security settlements at Lehman</p> <p>22 Brothers.</p> <p>23 Q. And at the time of this e-mail on</p> <p>24 September 29, 2008, is he working for Barclays?</p> <p>25 A. I don't know. Legally, I just don't</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 know when he became a Barclays Capital employee,</p> <p>3 so I don't know that to be fact.</p> <p>4 Q. Okay. Well, he says -- the first</p> <p>5 e-mail on the string is sent to you, among other</p> <p>6 people, correct?</p> <p>7 A. Uh-huh.</p> <p>8 Q. He says, "We have completed the</p> <p>9 deliveries of the 636 collateral to Barclays</p> <p>10 Capital. We have delivered a total of 255.6</p> <p>11 million in collateral." Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And does "636" refer to a particular</p> <p>14 account at the DTC?</p> <p>15 A. That's a Lehman Brothers account at</p> <p>16 DTC.</p> <p>17 Q. Okay. But that's what you understand</p> <p>18 the "636" to refer to?</p> <p>19 A. I'm sure that's what I would have</p> <p>20 referred it to, yes.</p> <p>21 Q. And then it says, "There are three</p> <p>22 Cusips that are chilled at DTC and which we were</p> <p>23 not able to deliver at this time totaling 14.3</p> <p>24 million." Do you recall what that issue was?</p> <p>25 A. Not particularly. I mean, you know,</p>

Page 118	Page 119
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 based on this e-mail, I assume there was some</p> <p>3 reason they couldn't move the three securities,</p> <p>4 they were in a corporate action or some reason.</p> <p>5 "Chilled" is a term that's used for</p> <p>6 some reason that they can't move securities to</p> <p>7 somebody for some particular reason. So I</p> <p>8 assume that he's just highlighting the fact that</p> <p>9 these were supposed to come to us as well, but</p> <p>10 they couldn't deliver them at that particular</p> <p>11 time because they were -- something was</p> <p>12 happening on a corporate action related to them.</p> <p>13 That would be my guess anyway.</p> <p>14 Q. Okay. And so you write back, "Thanks</p> <p>15 for the note. Do we have an approximate amount</p> <p>16 market value that we may be receiving from the</p> <p>17 O74 box."</p> <p>18 A. Which is the second DTC box.</p> <p>19 Q. A second account?</p> <p>20 A. At DTC that belonged to Lehman</p> <p>21 Brothers, Inc.</p> <p>22 Q. And then he tells you back, "I</p> <p>23 understand that in total we need to deliver 950</p> <p>24 million, so we need about 695 million to find in</p> <p>25 the O74 box."</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you understand why they need to</p> <p>4 deliver 950 million?</p> <p>5 MR. SHAW: Objection. Foundation.</p> <p>6 A. I have no idea. I don't know what</p> <p>7 context -- I don't know where the 950 million</p> <p>8 came from and why that number becomes special.</p> <p>9 You know, it just doesn't -- it could be -- I</p> <p>10 don't know. Maybe it's related to the September</p> <p>11 19th positions. I don't know in what frame he's</p> <p>12 referencing this to.</p> <p>13 Q. Okay. The next e-mail up you write to</p> <p>14 Carole Machell, "Once we get the 695 million, I</p> <p>15 believe that will be it."</p> <p>16 A. Yeah. I probably meant to say that's</p> <p>17 all that's coming.</p> <p>18 Q. Based on what?</p> <p>19 A. Based on what Neal's telling me, that</p> <p>20 they're going to send me 695 and then I would be</p> <p>21 done.</p> <p>22 Q. Okay. But then she asks you to, when</p> <p>23 you have ten minutes, can you take her through</p> <p>24 this.</p> <p>25 A. Yes.</p>
Page 120	Page 121
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 Q. Any recollection of speaking to her</p> <p>3 about it?</p> <p>4 A. No. Probably took more than ten</p> <p>5 minutes, though. That's the only thing I can</p> <p>6 probably recollect.</p> <p>7 No, I have no idea, other than the</p> <p>8 fact that, you know, just communicating</p> <p>9 information back to her where we were at any</p> <p>10 particular time. But my believing it ...</p> <p>11 (Continued on the next page to include</p> <p>12 the jurat.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 MR. ROTHMAN: Well, I thank you for</p> <p>3 your time. That's all I have.</p> <p>4 THE WITNESS: Great.</p> <p>5 MR. SHAW: Anything from our friends</p> <p>6 on the phone?</p> <p>7 MR. O'BRIEN: No questions.</p> <p>8 MR. TAMBE: No further questions.</p> <p>9 Thank you.</p> <p>10 (Time Noted: 12:32 P.M.)</p> <p>11 oOo</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 _____ JOHN RODEFELD</p> <p>17 Subscribed and sworn to</p> <p>18 before me this day</p> <p>19 of 2009.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 122	Page 123
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Kathy S. Klepfer, a Registered</p> <p>7 Merit Reporter and Notary Public within and</p> <p>8 for the State of New York, do hereby</p> <p>9 certify:</p> <p>10 That JOHN RODEFELD, the witness whose</p> <p>11 deposition is herein before set forth, was</p> <p>12 duly sworn by me and that such deposition is</p> <p>13 a true record of the testimony given by such</p> <p>14 witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 I further certify that neither the</p> <p>20 deponent nor a party requested a review of</p> <p>21 the transcript pursuant to Federal Rule of</p> <p>22 Civil Procedure 30(e) before the deposition</p> <p>23 was completed.</p> <p>24 In witness whereof, I have hereunto</p> <p>25 set my hand this 27th day of August, 2009.</p> <p>_____</p> <p>KATHY S. KLEPFER, RPR, RMR, CRR, CLR</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 INDEX</p> <p>3 WITNESS: EXAMINATION BY PAGE</p> <p>4 J. RODEFELD Mr. Tambe 5</p> <p>5 Mr. Rothman 65</p> <p>6</p> <p>7 EXHIBITS: PAGE</p> <p>8 Exhibit 279A, a document bearing Bates 42</p> <p>9 Nos. BCI-EX-(S)-47450 through 47452</p> <p>10 Exhibit 280A, a document bearing Bates 47</p> <p>11 Nos. BCI-EX-(S)-47647 through 47648</p> <p>12 Exhibit 281A, a document bearing Bates 51</p> <p>13 Nos. BCI-EX-(S)-47924 through 47926</p> <p>14 Exhibit 282A, a document bearing Bates 54</p> <p>15 Nos. BCI-EX-(S)-47942 through 47944</p> <p>16 Exhibit 283A, a document bearing Bates 58</p> <p>17 Nos. BCI-EX-(S)-47719 through 47724</p> <p>18 Exhibit 284A, a document bearing Bates 65</p> <p>19 Nos. BCI-EX-(S)-48037 through 48038</p> <p>20 Exhibit 285A, a document bearing Bates 77</p> <p>21 Nos. BCI-EX-(S)-49066</p> <p>22 Exhibit 286A, a document bearing Bates 85</p> <p>23 Nos. 49165 through 49166</p> <p>24 Exhibit 297A, a document bearing Bates 116</p> <p>25 Nos. BCI-EX-(S)-49591 through 49592</p>
Page 124	
<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 NAME OF CASE: In re Lehman Brothers Holding, Inc.</p> <p>3 DATE OF DEPOSITION: August 27, 2009</p> <p>4 NAME OF WITNESS: John Rodefelf</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page _____ Line _____ Reason _____</p> <p>10 From _____ to _____</p> <p>11 Page _____ Line _____ Reason _____</p> <p>12 From _____ to _____</p> <p>13 Page _____ Line _____ Reason _____</p> <p>14 From _____ to _____</p> <p>15 Page _____ Line _____ Reason _____</p> <p>16 From _____ to _____</p> <p>17 Page _____ Line _____ Reason _____</p> <p>18 From _____ to _____</p> <p>19 Page _____ Line _____ Reason _____</p> <p>20 From _____ to _____</p> <p>21 Page _____ Line _____ Reason _____</p> <p>22 From _____ to _____</p> <p>23 Page _____ Line _____ Reason _____</p> <p>24 From _____ to _____</p> <p>25 _____</p> <p>JOHN RODEFELD</p>	

BCI EXHIBIT

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1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF GARY ROMAIN
10 New York, New York
11 Thursday, September 10, 2009
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20 Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
21 JOB NO. 24298
22
23
24
25

Page 2	Page 3
<p>1 2 3 4 5 September 10, 2009 6 9:42 a.m. 7 8 9 HIGHLY CONFIDENTIAL deposition of 10 GARY ROMAIN, held at the offices of 11 Jones Day, 222 East 41st Street, New 12 York, New York, pursuant to Notice, 13 before Francis X. Frederick, a Certified 14 Shorthand Reporter, Registered Merit 15 Reporter, and Notary Public of the 16 States of New York and New Jersey. 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: JAYANT W. TAMBE, ESQ. 9 TERRY McMAHON, ESQ. 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays Capital 13 and the Witness 14 5301 Wisconsin Avenue N. W. 15 Washington D.C. 20015 16 BY: JONATHAN M. SHAW, ESQ. 17 LOUIS SMITH, ESQ. 18 19 20 QUINN, EMANUEL, URQUHART, OLIVER & 21 HEDGES, LLP 22 Attorneys for the Creditors Committee 23 865 S. Figueroa Street, 10th Floor 24 Los Angeles, California 90017 25 BY: SOYUN ROE, ESQ. (via telephone)</p>
Page 4	Page 5
<p>1 2 3 APPEARANCES: (Cont'd.) 4 JENNER & BLOCK, LLC 5 Attorneys for the Examiner 6 330 N. Wabash Avenue 7 Chicago, Illinois 60611-7603 8 BY: JACOB P. ZIPFEL, ESQ. 9 10 HUGHES, HUBBARD & REED, LLP 11 Attorneys for the SIPA Trustee 12 1775 I Street, N.W. 13 Washington D.C. 20006-2401 14 BY: JOHN F. WOOD, ESQ. 15 SAMUEL C. McCOUBREY, ESQ. 16 17 18 19 20 21 22 23 24 ALSO PRESENT: 25 RAJESH ANKALKOTI, Alvarez & Marsal</p>	<p>1 PROCEEDINGS - HIGHLY CONFIDENTIAL 2 GARY ROMAIN, called as a witness, 3 having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MR. TAMBE: 8 Q. Good morning, Mr. Romain. My name 9 is Jay Tambe. I'm with the law firm of Jones 10 Day. We're special counsel to Lehman Brothers 11 Holdings, Inc. We're here to ask you some 12 questions about the Lehman/Barclays 13 transaction from September of last year. With 14 me is my colleague, Terry McMahon. I'm going 15 to let the other lawyers down the table 16 introduce themselves and then we'll get 17 started. 18 THE WITNESS: Okay. 19 MR. WOOD: John Wood from Hughes 20 Hubbard & Reed on behalf of the SIPA 21 trustee. 22 MR. McCOUBREY: Sam McCoubrey also 23 from Hughes Hubbard & Reed on behalf of 24 the SIPA trustee. 25 MR. ZIPFEL: Jacob Zipfel from</p>

Page 6

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Jenner & Block representing the
3 examiner.
4 MR. SHAW: Jonathan Shaw and Louis
5 Smith, Boies, Schiller & Flexner, on
6 behalf of Barclays and the witness.
7 MR. TAMBE: Just before we get
8 started a couple of preliminary matters.
9 Mr. Shaw, as I understand it, this
10 witness has been identified as a
11 30(b)(6) witness for certain topics on
12 certain 30(b)(6) notices, correct?
13 MR. SHAW: Correct.
14 MR. TAMBE: And there are three
15 30(b)(6) notices. He's been identified
16 as a witness with knowledge on the third
17 notice, the OCC notice; is that correct?
18 MR. SHAW: Yes. And certain
19 aspects of the second notice as well.
20 MR. TAMBE: So on the third notice
21 I believe yesterday was the first that
22 we heard that he might be an additional
23 deponent on that. And in addition this
24 morning before we got started with the
25 deposition you have handed me several

Page 8

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 pre-existing documents, they were all in
3 existence before this.
4 MR. TAMBE: And just for the
5 record, there are nine manila folders
6 and I believe each folder has multiple
7 copies of relevant documents, correct?
8 MR. SHAW: That was the intent.
9 MR. TAMBE: Okay. Thanks.
10 Now, in addition to testifying as
11 the 30(b)(6) witness, the witness is
12 also here to provide testimony as a
13 notice witness, correct?
14 MR. SHAW: Correct.
15 BY MR. TAMBE:
16 Q. All right. So, Mr. Romain, as we
17 proceed through the day today we're going to
18 ask you questions of your own personal
19 knowledge and ask you about certain documents
20 that have been gathered through the discovery
21 process. When we get to a topic concerning a
22 30(b)(6) issue, we will -- I will identify
23 that I'm asking you a series of questions in
24 your capacity as a 30(b)(6) witness.
25 Let me step back and ask you

Page 7

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 manila folders of documents. If you
3 could just tell me generically, what is
4 this collection of documents?
5 MR. SHAW: In preparing himself to
6 testify on these topics under the
7 30(b)(6) notice Mr. Romain has made some
8 notes and compiled a few materials that
9 will help him to testify accurately.
10 MR. TAMBE: Okay.
11 MS. ROE: Excuse me. I just
12 wanted to note my appearance. Soyun Roe
13 Quinn Emmanuel, Los Angeles, on behalf
14 of Creditors Commitment.
15 MR. TAMBE: Okay. Got it.
16 MR. WOOD: Can I just ask a
17 question on that. When you were saying
18 that the witness made some notes and
19 compiled a few documents to testify, so
20 are these all documents that were
21 created in the process of preparing the
22 30(b)(6) witness or were some of them
23 pre-existing documents?
24 MR. SHAW: With the exception of
25 his notes and some annotations on some

Page 9

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 generally, what, if anything, have you done to
3 prepare yourself to testify as the 30(b)(6)
4 witness?
5 A. In order to prepare myself I
6 revisited the work that I did on the
7 acquisition and subsequently to refresh my
8 memory. And I put together the notes which
9 have just been provided to you to further
10 ensure that I'll be giving accurate testimony
11 on certain aspects. And that was about
12 basically it.
13 Q. And when you said you revisited
14 the work that you'd done, did you do that
15 yourself or with others?
16 A. I did that myself. Where there
17 were items where I wanted to refresh my memory
18 I spoke with other people.
19 Q. Okay. Could you identify the
20 people you spoke with?
21 A. They're numerous. It depends on
22 which particular item you're talking about.
23 But I wouldn't be able to put together a
24 complete list off the top of my head.
25 Q. Okay. At least in my mind there

Page 10	Page 11
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 are broadly three areas in which you are the 3 30(b)(6) witness. One is to do with the OCC 4 margin and values. The other has to do with 5 what we refer to as Schedule A and Schedule B 6 on the Asset Purchase Agreement, correct? 7 A. Yeah. 8 Q. And a third category were certain 9 documents or spreadsheets that were prepared 10 for Barclays auditors, right? 11 A. Sure. 12 Q. On the Schedule A, Schedule B 13 issues who did you speak with to get ready for 14 your 30(b)(6) deposition? 15 A. The most significant conversations 16 I had in preparation were with -- let me go 17 through it -- with Sean Teague. With Stephen 18 Callick. With Jerry Shi. With Lee Howell. 19 With Ian Cooper. 20 MR. SHAW: Let me just ask to 21 clarify the question. Mr. Tambe's 22 question involves specifically the 23 subject of the Schedule A and Schedule 24 B. Were your conversations you 25 described on that subject or on other</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 subjects? 3 THE WITNESS: In terms of just the 4 Schedule A and Schedule B that would be 5 the -- discussion I've had on Schedule A 6 and Schedule B. I have to give this 7 some thought. 8 (Pause on the record.) 9 A. Actually, those five. Schedule A 10 and Schedule B would be just Sean Teague. The 11 other four would relate to the third item, the 12 OCC. 13 Q. And on the auditor spreadsheets 14 who did you speak to if anyone to get ready to 15 testify on those topics? 16 A. The auditor spreadsheets I didn't 17 speak to anybody in particular because the -- 18 the two documents -- the two main documents, 19 one of which was put together by myself so 20 very little refreshing of memory was required. 21 The other one I worked with 22 consistently over the period. So, again, very 23 little refreshing of my memory was required. 24 Q. Did you read any deposition 25 testimony that's been given in this matter to</p>
Page 12	Page 13
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 get ready for your deposition? 3 A. I read the deposition testimony of 4 Patrick Clackson. 5 Q. And did you speak with Mr. 6 Clackson about his deposition testimony? 7 A. No. 8 Q. Did you speak with anyone else 9 about Mr. Clackson's deposition testimony 10 other than counsel? 11 A. No. 12 Q. You're currently employed by 13 Barclays, correct? 14 A. That's correct. 15 Q. And in what position? 16 A. I'm head of technical accounting 17 and private equity finance for Barclays 18 Capital. 19 Q. And how long have you been at 20 Barclays? 21 A. Just over five years. 22 Q. And before that where were you? 23 A. I was at Deloitte for nine years 24 prior to that. 25 Q. And do you hold any professional</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 certifications from any accounting bodies 3 anywhere in the world? 4 A. I'm an ICA so the English and 5 Welsh Institutional Chartered Accountant. 6 Q. Last September 2008, did you have 7 the same position that you have now? 8 A. I did, yes. 9 Q. Describe generally for me in the 10 time period of, say, August, through December 11 of 2008, broadly, what role you played in 12 connection with the Lehman acquisition. 13 A. Sure. 14 Q. So starting in August. 15 A. Yeah. In August I was involved in 16 an exercise placed on the published financial 17 information for Lehman to try to come up with 18 a picture of what the accounts of combined 19 Barclays and Lehman might look like. Barclays 20 and Lehman use different sets of accounting 21 rules so the primary purpose of my involvement 22 was to try to eliminate those differences. I 23 was then involved -- well, let's give a time 24 line. So Friday the 13th of September -- 25 Q. It's the 12th of September.</p>

Page 14	Page 15
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Friday, the 12th of September. I</p> <p>3 became aware that some people were heading</p> <p>4 over to New York in relation to a potential</p> <p>5 deal with Lehman. I was called onto a</p> <p>6 conference call in the early hours of Saturday</p> <p>7 the 13th of September with Marie Stewart who</p> <p>8 was my equivalent at Lehman, Lehman Brothers.</p> <p>9 So the head of their technical accounting</p> <p>10 department. Really to try to augment my</p> <p>11 understanding. Because obviously during</p> <p>12 August we only had access to published</p> <p>13 financial information. So to augment my</p> <p>14 understanding by talking to somebody who had a</p> <p>15 greater understanding of their accounting</p> <p>16 policies and how they feed into their</p> <p>17 financial statements.</p> <p>18 I then flew to New York on the</p> <p>19 afternoon of Saturday, the 13th. When I</p> <p>20 arrived it would have been early evening and I</p> <p>21 was advised that the deal which was being</p> <p>22 considered was no longer proceeding. A few</p> <p>23 hours later I was called into the office by</p> <p>24 Patrick Clackson. He had a few questions in</p> <p>25 relation to a deal which may be resurrected at</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 that time. I didn't have any details of the</p> <p>3 transaction that we were looking at but he had</p> <p>4 a couple of accounting questions which I</p> <p>5 answered for him.</p> <p>6 The next time that I had</p> <p>7 involvement was -- it would have been</p> <p>8 mid-morning on Monday, the 15th, when I and a</p> <p>9 number of others headed across to the Lehman</p> <p>10 headquarters at -- on Seventh Avenue with the</p> <p>11 understanding that there was a deal which was</p> <p>12 now being pursued. And I spent the next 24 to</p> <p>13 30 hours I guess over there. I can't remember</p> <p>14 exactly when I left but it would have been</p> <p>15 probably early afternoon Tuesday. During that</p> <p>16 period I was providing support to -- well, to</p> <p>17 Patrick Clackson and through him to a number</p> <p>18 of individuals were involved in the</p> <p>19 negotiations at that time. That assistance</p> <p>20 was -- some of it was administrative, just</p> <p>21 pulling together documents, copying them, and</p> <p>22 providing them to them. Other was liaising</p> <p>23 with a number of Lehman staff to try to get a</p> <p>24 number of information that they were asking --</p> <p>25 Barclays executives were asking for.</p>
Page 16	Page 17
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let me stop you there.</p> <p>3 A. Sure.</p> <p>4 Q. So you're on the Monday/Tuesday of</p> <p>5 the week of the bankruptcy.</p> <p>6 A. That's right.</p> <p>7 Q. You've described some of the</p> <p>8 support you were providing Mr. Clackson and</p> <p>9 others those two days.</p> <p>10 Is it fair that on that</p> <p>11 Monday/Tuesday you were not involved in</p> <p>12 negotiating any aspect of the transaction?</p> <p>13 A. That's correct. I wasn't involved</p> <p>14 in any of the negotiations.</p> <p>15 Q. Were you doing any valuation</p> <p>16 exercises of Lehman's assets on the</p> <p>17 Monday/Tuesday?</p> <p>18 A. No, I was not.</p> <p>19 Q. Were you aware that there were</p> <p>20 valuation discussions taking place between</p> <p>21 Barclays and Lehman on that Monday/Tuesday?</p> <p>22 A. I was aware that valuation was an</p> <p>23 element of the conversations which were going</p> <p>24 on. But I wasn't involved in discussions</p> <p>25 themselves.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. What if anything do you recall</p> <p>3 about the nature of the valuation discussions</p> <p>4 that you understood were taking place?</p> <p>5 A. I don't really have any</p> <p>6 understanding of the nature.</p> <p>7 Q. All right. So let's carry on back</p> <p>8 with the time line. You were talking about</p> <p>9 Monday/Tuesday. Carry on.</p> <p>10 A. Sure. So from that period onwards</p> <p>11 the main task which was given to me was to</p> <p>12 look towards our accounting treatment and</p> <p>13 eventual disclosure of the transaction. So</p> <p>14 over the next period of -- well, from then</p> <p>15 right through till shortly before our</p> <p>16 financial statements were published in</p> <p>17 February I had and maintained the acquisition</p> <p>18 balance sheets which was -- until just before</p> <p>19 it was published was in the form of an Excel</p> <p>20 spreadsheet which was summarizing the balance</p> <p>21 sheet which needs to be disclosed in our</p> <p>22 financial statements in the 6-K. That was a</p> <p>23 working document through that period of the</p> <p>24 time line.</p> <p>25 Q. Okay. On that Monday/Tuesday of</p>

Page 18	Page 19
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 that week, the week of the 15th, were you</p> <p>3 involved in reviewing or preparing any</p> <p>4 materials for the board of directors of</p> <p>5 Barclays?</p> <p>6 A. I was not involved in reviewing or</p> <p>7 preparing any.</p> <p>8 Q. Okay. Did you -- okay.</p> <p>9 We're just going to pull an</p> <p>10 exhibit and I'll discuss that with you.</p> <p>11 A. Sure.</p> <p>12 (Pause on the record.)</p> <p>13 Q. Sir, I've placed before you a</p> <p>14 document that's previously marked as</p> <p>15 Exhibit 377A.</p> <p>16 A. Um-hum.</p> <p>17 Q. It has the Bates numbers</p> <p>18 BCI-EX-115843 through -846.</p> <p>19 A. Um-hum.</p> <p>20 Q. Is that the final Excel version of</p> <p>21 the acquisition balance sheet, sir?</p> <p>22 A. Yes. That's correct. It's --</p> <p>23 sheets 844 and 845 are the final Excel --</p> <p>24 well, 845, 845 and 846 are the final Excel</p> <p>25 versions of the acquisition balance sheet.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 843 was and is the same information which is</p> <p>3 put into a form appropriate for disclosure</p> <p>4 because Barclays' balance sheet have a</p> <p>5 prescribed format and the items in the</p> <p>6 acquisition balance sheet needed to be</p> <p>7 appropriately allocated amongst those balance</p> <p>8 sheet categories for disclosure.</p> <p>9 Q. And so the acquisition balance</p> <p>10 sheet, the Excel version, the -44, -45 and</p> <p>11 -46, that's the document you were describing</p> <p>12 before which was an evolving document which</p> <p>13 finally rolled up to the disclosure document</p> <p>14 which is the first page of the exhibit; is</p> <p>15 that fair?</p> <p>16 A. It's fair. To expand, when you</p> <p>17 say final, it was final in that it was the</p> <p>18 version which was disclosed in our 2008</p> <p>19 financial statements. Under the regulatory</p> <p>20 accounting standards you have until twelve</p> <p>21 months after the acquisition to finalize your</p> <p>22 initial accounting for an acquisition. That</p> <p>23 anniversary hasn't quite passed yet and,</p> <p>24 therefore, this is not final until we declare</p> <p>25 our accounting disclosed.</p>
Page 20	Page 21
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And as you sit here, are you aware</p> <p>3 of any adjustments or changes you expect to</p> <p>4 make on the one-year anniversary?</p> <p>5 A. We don't expect to make any</p> <p>6 changes.</p> <p>7 Q. And we'll come back to 377A later</p> <p>8 in the examination.</p> <p>9 A. Sure.</p> <p>10 (Deposition Exhibit 388A, document</p> <p>11 bearing production number</p> <p>12 BCI-EX-(S)-000520127 with attachment,</p> <p>13 marked for identification as of this</p> <p>14 date.)</p> <p>15 BY MR. TAMBE:</p> <p>16 Q. Sir, I've placed before you a</p> <p>17 document marked as 388A. It's a cover e-mail</p> <p>18 and what looks like a Powerpoint document</p> <p>19 attached to it. Please take a moment to</p> <p>20 review it and let me know when you're done and</p> <p>21 I'll ask you some questions.</p> <p>22 (Document review.)</p> <p>23 Q. Sir, have you had a chance to</p> <p>24 review it, sir?</p> <p>25 A. I have, yes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. And you'll see the cover</p> <p>3 e-mail is an e-mail from Marie Stewart and you</p> <p>4 referred to her earlier, correct?</p> <p>5 A. That's right.</p> <p>6 Q. She was your counterpart at</p> <p>7 Lehman.</p> <p>8 A. That's correct.</p> <p>9 Q. And this is a cover e-mail</p> <p>10 addressed to you and looks like others at</p> <p>11 Barclays; is that correct?</p> <p>12 A. Yes. That's correct.</p> <p>13 Q. Who's Chris Weidler and Charles</p> <p>14 Utley?</p> <p>15 A. Chris Weidler, he works in finance</p> <p>16 based in London. His title is head of</p> <p>17 financial reporting. European head of</p> <p>18 financial reporting. Charles Utley is the US</p> <p>19 regional head of technical accounting based in</p> <p>20 New York.</p> <p>21 Q. And the document that's attached</p> <p>22 to this e-mail from Marie Stewart to you, was</p> <p>23 that a document you had requested that she</p> <p>24 provide you?</p> <p>25 A. I don't recall receiving this</p>

Page 22	Page 23
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 document. I do recall Marie Stewart sending a</p> <p>3 number of documents to me during the process</p> <p>4 from Saturday on for the next couple weeks. I</p> <p>5 don't recall requesting or subsequently using</p> <p>6 this document.</p> <p>7 Q. And having skimmed through the</p> <p>8 document, do you have an understanding of what</p> <p>9 the document is?</p> <p>10 A. I have an understanding that it</p> <p>11 is -- it is the sum -- it's the summary of</p> <p>12 some exercise to fair value elements of the</p> <p>13 Lehman Brothers business. That's what it</p> <p>14 seems to be.</p> <p>15 Q. The e-mail from Marie Stewart is</p> <p>16 dated the 13th of September. The Saturday,</p> <p>17 correct?</p> <p>18 A. Yeah.</p> <p>19 Q. And that's the day you flew over</p> <p>20 from London to New York to join your</p> <p>21 colleagues here.</p> <p>22 A. Yeah.</p> <p>23 Q. The transaction that was being</p> <p>24 contemplated over that weekend, was that an</p> <p>25 acquisition of the entirety of Lehman's</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 business?</p> <p>3 A. The transaction that -- my</p> <p>4 understanding of the transaction which I was</p> <p>5 informed had not been proceeded with when I</p> <p>6 left on Saturday was an acquisition of the</p> <p>7 Lehman business. That was my understanding.</p> <p>8 But I wasn't involved in those discussions so</p> <p>9 it's only an understanding.</p> <p>10 Q. And was it your understanding --</p> <p>11 do you have an understanding what this e-mail</p> <p>12 from Marie Stewart to you was in connection</p> <p>13 with that contemplated transaction?</p> <p>14 A. No, I don't.</p> <p>15 Q. Do you recall using the attachment</p> <p>16 to that e-mail for any purpose?</p> <p>17 A. No.</p> <p>18 (Deposition Exhibit 389A, document</p> <p>19 bearing production number</p> <p>20 BCI-EX-(S)-00052084, marked for</p> <p>21 identification as of this date.)</p> <p>22 BY MR. TAMBE:</p> <p>23 Q. Sir, I've placed before you a</p> <p>24 one-page document marked Exhibit 389A. Take a</p> <p>25 moment to review it and let me know when</p>
Page 24	Page 25
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 you're done.</p> <p>3 A. Sure. Yeah.</p> <p>4 Q. You'll recognize this as an e-mail</p> <p>5 from Mr. Clackson to you and many other folks</p> <p>6 at Barclays.</p> <p>7 Do you see that?</p> <p>8 A. Yeah.</p> <p>9 Q. Is Mr. Clackson someone you report</p> <p>10 to directly?</p> <p>11 A. No, I report -- well, are you</p> <p>12 asking now or at that time?</p> <p>13 Q. Let's ask back then.</p> <p>14 A. Back then I was reporting to Hugh</p> <p>15 Shields who reported to Patrick Clackson.</p> <p>16 Q. And now?</p> <p>17 A. And now I report to Mark Merson</p> <p>18 who reports to Patrick Clackson.</p> <p>19 Q. You'll see in Mr. Clackson's</p> <p>20 e-mail, the second paragraph states, "We</p> <p>21 nearly got there and the value created by the</p> <p>22 deal would have been an incredible</p> <p>23 \$25 billion."</p> <p>24 Do you see that?</p> <p>25 A. I do, yeah.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you have any discussions with</p> <p>3 anyone over that weekend about the value of</p> <p>4 Lehman transaction, the deal that was being</p> <p>5 contemplated?</p> <p>6 A. No, I didn't.</p> <p>7 Q. And just in orders of magnitude</p> <p>8 the value of \$25 billion, do you have any idea</p> <p>9 how that compares to the value of the Lehman</p> <p>10 operations that were contemplated being</p> <p>11 acquired that weekend?</p> <p>12 A. No, I don't know.</p> <p>13 Q. You told us that on Monday, the</p> <p>14 15th, you learned that a potential transaction</p> <p>15 with Lehman possibly was back in</p> <p>16 consideration, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And who did you hear that from?</p> <p>19 A. I heard that from James Walker who</p> <p>20 was the CFO of the Americas at the time.</p> <p>21 Q. At Barclays.</p> <p>22 A. At Barclays Capital.</p> <p>23 Q. And what were you told about the</p> <p>24 nature of the contemplated transaction on</p> <p>25 Monday, the 15th?</p>

Page 26

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. At that time very little. I was
3 essentially providing support to a group of
4 people that were negotiating to make a deal.
5 But I wasn't involved in the negotiation of
6 the deal directly. So my involvement was much
7 more limited to the information I was
8 providing at that time.
9 Q. Was it your understanding either
10 on Monday or in the subsequent days that the
11 transaction that was being contemplated was a
12 purchase of select assets from Lehman
13 Brothers?
14 A. Yes.
15 Q. Did you have an understanding as
16 to whether Barclays was negotiating the value
17 at which it would be purchasing those assets
18 from Lehman Brothers?
19 A. I didn't have an understanding of
20 the negotiations as involves those terms, no.
21 Q. At any time, has it been your
22 understanding that Barclays purchased assets
23 from Lehman at a value other than the book
24 value at which those assets were being carried
25 by Lehman?

Page 28

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 "block discount"?
3 A. I don't recall anybody using the
4 phrase.
5 (Deposition Exhibit 390A, document
6 bearing production numbers
7 BCI-EX-(S)-00023761 through
8 BCI-EX-(S)-00023762 with attachment,
9 marked for identification as of this
10 date.)
11 BY MR. TAMBE:
12 Q. Sir, I've placed before you a
13 multi-page document marked Exhibit 390A. Take
14 a moment to review the document. It's a cover
15 e-mail, a placeholder sheet, and then a small
16 spreadsheet. Let me know when you're done.
17 (Document review.)
18 A. Okay, yeah.
19 Q. All right. The cover e-mail, at
20 least the e-mail address block states it's
21 from Tom McCosker to several people at
22 Barclays but you recognize this as an e-mail
23 that you sent, correct?
24 A. That's right.
25 Q. You were sending it from Tom's

Page 27

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. Sorry. I'm not sure I understand
3 the question.
4 Q. Lehman had a series of assets that
5 it carried at some value on its books,
6 correct?
7 A. Yeah.
8 Q. Is it your understanding -- has it
9 ever been your understanding, that Barclays
10 purchased some selection of those assets at
11 values other than the book values at which
12 Lehman carried those assets?
13 A. I didn't have an understanding of
14 a transaction whereby we were purchasing
15 certain assets at a particular value. I had
16 an understanding of the assets that were being
17 purchased which grew over time and I have an
18 understanding of the amount of consideration
19 which was being paid as being elements of the
20 deal. But in terms of the relationship
21 between the two, I wasn't involved in the
22 discussions as to how those terms were arrived
23 at.
24 Q. In connection with the Lehman
25 transaction, did anyone ever use the phrase

Page 29

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 e-mail box.
3 A. Absolutely.
4 Q. The spreadsheet that's attached to
5 the cover e-mail, could you tell us what that
6 is?
7 A. Well, that is -- that was a very
8 preliminary summary of assets and liabilities
9 which was put together into a balance sheet
10 format and I was asked to send to the people
11 in the "to" box there.
12 At the time I sent the e-mail I
13 was at the -- I was on the 31st floor of 745
14 providing support to Patrick and the
15 negotiators. I was provided with these
16 numbers as being numbers to put into that
17 format and sent.
18 Q. In your cover e-mail you'll see a
19 reference to the PC used was installed with an
20 updated version of Excel.
21 Do you see that?
22 A. Yeah.
23 Q. Was that a Lehman PC that you were
24 using to create this?
25 A. No. It was a Barclays laptop that

Page 30	Page 31
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 we'd taken across.</p> <p>3 Q. On your acquisition summary, the</p> <p>4 third page of the exhibit, the calculation</p> <p>5 there begins with the line item that states</p> <p>6 Inventory Carrying Amount.</p> <p>7 Do you see that? 64 billion?</p> <p>8 A. I do, yes.</p> <p>9 Q. Where did that number and the</p> <p>10 other numbers on the sheet come from?</p> <p>11 A. I don't recall who provided them</p> <p>12 to me. At that stage I wouldn't have been</p> <p>13 involved in any of the underlying work so I</p> <p>14 was provided with those numbers to send and at</p> <p>15 that time, the 16th of September, would have</p> <p>16 obviously been very preliminary numbers.</p> <p>17 Q. And the next line item on that</p> <p>18 page, the third page of 390A, is Inventory</p> <p>19 Valuation Adjustment.</p> <p>20 Do you see that?</p> <p>21 And that's a negative \$3.5 billion</p> <p>22 number.</p> <p>23 A. Yeah.</p> <p>24 Q. Right. Do you know what that's a</p> <p>25 reference to?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't, no.</p> <p>3 Q. If you look on your cover e-mail</p> <p>4 that you sent you refer to that \$3.5 billion</p> <p>5 adjustment as a writedown.</p> <p>6 Do you see that?</p> <p>7 A. I do, yeah.</p> <p>8 Q. Was it your understanding that the</p> <p>9 carrying value of these assets was being</p> <p>10 written down by Barclays in calculating this</p> <p>11 acquisition summary?</p> <p>12 A. At that time I didn't have enough</p> <p>13 information to have a real sense.</p> <p>14 Q. You had on the liability section a</p> <p>15 bonus accrual item of 1.3 billion.</p> <p>16 Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. And, again, do you know the source</p> <p>19 of that number?</p> <p>20 A. I don't, no.</p> <p>21 Q. I'm sorry if I've already asked</p> <p>22 you this. Who was providing you with these</p> <p>23 numbers?</p> <p>24 A. I don't recall who provided me</p> <p>25 with those numbers precisely. It would have</p>
Page 32	Page 33
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 been somebody that was involved in the process</p> <p>3 but I couldn't pinpoint to it an individual.</p> <p>4 Q. And, again, I'm just trying to</p> <p>5 understand the exercise that was going on when</p> <p>6 this sheet was prepared.</p> <p>7 A. Sure.</p> <p>8 Q. You had an Excel spreadsheet</p> <p>9 opened and someone was giving you assets and</p> <p>10 liabilities to put into a balance sheet, a</p> <p>11 rudimentary balance sheet; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Sir, I've handed you a document</p> <p>14 that was previously marked as Exhibit 378.</p> <p>15 It's a covering e-mail, a placeholder sheet,</p> <p>16 and then a Powerpoint presentation. Take a</p> <p>17 moment to review the document and please let</p> <p>18 me know when you're done.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. The attachment to the cover</p> <p>22 e-mail, the Powerpoint document, have you seen</p> <p>23 that document before today, sir?</p> <p>24 A. I've seen it in preparation for</p> <p>25 the deposition. If it's -- or if not this</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 one, something which looks very similar to it.</p> <p>3 Q. Just keep that document in front</p> <p>4 of you. I'm marking another exhibit.</p> <p>5 A. Um-hum.</p> <p>6 (Deposition Exhibit 391A, document</p> <p>7 bearing production numbers</p> <p>8 BCI-EX-001766522 through</p> <p>9 BCI-EX-001766536, marked for</p> <p>10 identification as of this date.)</p> <p>11 BY MR. TAMBE:</p> <p>12 Q. Sir, I've had placed before you a</p> <p>13 document marked 391A. Please take a look at</p> <p>14 it. It's also a Powerpoint presentation with</p> <p>15 a similar title to Exhibit 378.</p> <p>16 Is that the document you reviewed</p> <p>17 in preparation for the deposition?</p> <p>18 MR. SHAW: I note that there</p> <p>19 appear to be multiple documents here.</p> <p>20 A. Are these identical?</p> <p>21 Oh, no. This one has some</p> <p>22 scribbles on it.</p> <p>23 They look very, very similar so</p> <p>24 I'm not sure.</p> <p>25 Q. And just as a housekeeping matter,</p>

Page 34	Page 35
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 the last three pages of the exhibit, I think</p> <p>3 we can just extract. It's a different form of</p> <p>4 document. It look like a memo.</p> <p>5 A. Oh, okay.</p> <p>6 Q. You can just pull those right off.</p> <p>7 A. Sure.</p> <p>8 Q. So the exhibit will just be the</p> <p>9 Powerpoint presentation.</p> <p>10 A. Okay.</p> <p>11 Q. So looking at the Powerpoint</p> <p>12 presentation it appears to be on a quick</p> <p>13 summary similar to the document that's</p> <p>14 attached to Exhibit 378 except for some</p> <p>15 handwritten scribbles; is that right?</p> <p>16 A. It appears to be, yes.</p> <p>17 Q. Are those your handwritten</p> <p>18 scribbles there?</p> <p>19 A. No. That's not my handwriting.</p> <p>20 MR. TAMBE: I could ask counsel.</p> <p>21 We received this collection of documents</p> <p>22 I believe yesterday. Is that right,</p> <p>23 Terry?</p> <p>24 MR. McMAHON: Right.</p> <p>25 MR. TAMBE: Whose files did these</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 documents come from?</p> <p>3 MR. SHAW: If it's what I think it</p> <p>4 is, then this was from a collection of</p> <p>5 hard copy documents that Mr. Romain had.</p> <p>6 MR. TAMBE: Okay.</p> <p>7 BY MR. TAMBE:</p> <p>8 Q. Is that fair, Mr. Romain? Was</p> <p>9 that a collection of hard copy documents that</p> <p>10 you turned over to your counsel?</p> <p>11 A. Yes, that's true.</p> <p>12 Q. And it's possible that in that</p> <p>13 collection of hard copy documents were</p> <p>14 documents with other people's handwriting on</p> <p>15 them?</p> <p>16 A. Yes.</p> <p>17 Q. And you wouldn't know whose</p> <p>18 handwriting this is on Exhibit 391A; is that</p> <p>19 fair?</p> <p>20 A. No, no.</p> <p>21 Q. Do you understand the nature of</p> <p>22 the handwriting? I believe you're looking at</p> <p>23 page 5 of the Powerpoint.</p> <p>24 A. I'm looking at page 5. No, I'm</p> <p>25 not aware of what the amendments were there</p>
Page 36	Page 37
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 for.</p> <p>3 Q. If you look at that column that</p> <p>4 states New Transaction Included Gross, do you</p> <p>5 see that column?</p> <p>6 A. I do, yes.</p> <p>7 Q. That column totaled up to</p> <p>8 75.3 billion?</p> <p>9 Do you see that?</p> <p>10 A. I do, yeah.</p> <p>11 Q. And the heading on this Powerpoint</p> <p>12 page states total assets and new transaction</p> <p>13 are 75 billion.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Any understanding as to where that</p> <p>17 number comes from, the \$75 billion number?</p> <p>18 A. No, I don't. There were multiple</p> <p>19 spreadsheets circulating around that time as</p> <p>20 the nature of the deal and information changed</p> <p>21 around that time and subsequently. So I</p> <p>22 wouldn't know -- I wouldn't know what set of</p> <p>23 numbers these were drawn from. But given the</p> <p>24 date they would certainly have been very</p> <p>25 preliminary numbers.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And looking at this exhibit,</p> <p>3 Exhibit 391A, if you turn to the second page</p> <p>4 of the exhibit -- yeah, that's the one.</p> <p>5 It states Project Long Island</p> <p>6 Board Discussion Materials.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And do you understand these were</p> <p>10 materials prepared for discussion at a board</p> <p>11 of directors meeting at Barclays?</p> <p>12 A. I don't know that.</p> <p>13 Q. Well, if you turn to the next</p> <p>14 page, page 2 of the presentation, the very</p> <p>15 last point on that page states, "We are</p> <p>16 seeking board approval for the transaction and</p> <p>17 to issue 612 million Barclay shares."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Does that help your understanding</p> <p>21 that this was prepared for the board of</p> <p>22 directors meeting for Barclays?</p> <p>23 A. I don't know that.</p> <p>24 Q. Did the \$75 billion number we were</p> <p>25 talking about a few minutes ago, are you aware</p>

<p style="text-align: right;">Page 38</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 of any other description of the assets to be</p> <p>3 purchased being provided to the board of</p> <p>4 directors on or around the 16th of September?</p> <p>5 A. I wasn't involved in the provision</p> <p>6 of materials to the board.</p> <p>7 (Deposition Exhibit 392A, document</p> <p>8 bearing production numbers</p> <p>9 BCI-EX-(S)-00023813 through</p> <p>10 BCI-EX-(S)-0023814, marked for</p> <p>11 identification as of this date.)</p> <p>12 BY MR. TAMBE:</p> <p>13 Q. Sir, I've handed you a two-page</p> <p>14 document marked 392A. It's an e-mail chain.</p> <p>15 Take a moment to review it and let me know</p> <p>16 when you're done.</p> <p>17 (Document review.)</p> <p>18 A. Okay.</p> <p>19 Q. You'll see the cover e-mail, the</p> <p>20 first e-mail at the top of the page, the first</p> <p>21 page of Exhibit 392A, is someone from called</p> <p>22 Vivek Syal?</p> <p>23 A. Um-hum.</p> <p>24 Q. To you and then c.c.'d to others.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 39</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Who is Vivek Syal?</p> <p>4 A. He works for Barclays Capital but</p> <p>5 are you asking for what role he would have</p> <p>6 been performing at that time?</p> <p>7 Q. If you know, yeah.</p> <p>8 A. I can't recall the exact title.</p> <p>9 He was -- he was a member -- a function which</p> <p>10 I would describe as similar to investor</p> <p>11 relations, but Barclays Capital rather than</p> <p>12 Barclays Group.</p> <p>13 Q. And you'll see that Vivek is</p> <p>14 forwarding you an e-mail which has a</p> <p>15 calculation in it.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And the e-mail that's being</p> <p>19 forwarded to you, and you were a c.c. on that</p> <p>20 original e-mail as well, begins with the</p> <p>21 following phrase: "Following the numerous</p> <p>22 e-mails on people trying to reconcile the</p> <p>23 75.3 billion pound in the board dec and in</p> <p>24 particular wanting to understand the</p> <p>25 19.9 billion in the board dec..." and then it</p>
<p style="text-align: right;">Page 40</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 goes on.</p> <p>3 Do you recall on or about the 16th</p> <p>4 being involved in any discussions about</p> <p>5 reconciling numbers in the board dec?</p> <p>6 A. I recall this e-mail, certainly.</p> <p>7 Q. Okay. So what do you recall about</p> <p>8 this e-mail?</p> <p>9 A. I recall that Bill was trying to</p> <p>10 reconcile a set of numbers he had and we had a</p> <p>11 conversation. I don't recall the entire</p> <p>12 content of that conversation. But essentially</p> <p>13 during that period the numbers -- people's</p> <p>14 understanding of the numbers on the 16th and</p> <p>15 subsequent to that, was changing over time.</p> <p>16 And I was trying to help Bill to track down</p> <p>17 where the number that he was referring to may</p> <p>18 have come from.</p> <p>19 In terms of the source of the</p> <p>20 information which is included here, I don't</p> <p>21 know where -- I don't know where those numbers</p> <p>22 would have come from.</p> <p>23 Q. And what you're referring to are</p> <p>24 the numbers in Bill Castell's e-mail, the</p> <p>25 asset and liability numbers, the other</p>	<p style="text-align: right;">Page 41</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 calculations, correct?</p> <p>3 A. Precisely.</p> <p>4 Q. Were you ever able to answer his</p> <p>5 question as to reconciling the 75.3 billion</p> <p>6 number?</p> <p>7 A. I don't recall.</p> <p>8 Q. Did you ever conclude that that</p> <p>9 was an incorrect number?</p> <p>10 A. The numbers which were circulated</p> <p>11 for a variety of purposes between a number of</p> <p>12 people during that period were based on</p> <p>13 preliminary estimates and people's best</p> <p>14 understanding of numbers. So I wouldn't use</p> <p>15 the word incorrect. I would say that the</p> <p>16 numbers -- the appropriate numbers for the</p> <p>17 deal changed over time for a variety of</p> <p>18 reasons until we ended up with the numbers</p> <p>19 that were disclosed in our annual report.</p> <p>20 Q. Were you involved at all in</p> <p>21 calculating any of the numbers that were</p> <p>22 disclosed to the Street in the analyst call</p> <p>23 that was held on the 17th of September?</p> <p>24 A. I don't recall any direct</p> <p>25 involvement. I may have answered questions</p>

Page 42	Page 43
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 from people who were involved in that. But it</p> <p>3 would be difficult to say more than that.</p> <p>4 Q. And certainly when Barclays was</p> <p>5 speaking to the Street on the 17th, Barclays</p> <p>6 would have made an effort to be accurate in</p> <p>7 its description of the transaction, correct?</p> <p>8 A. Because I wasn't involved in the</p> <p>9 conversation, I think I probably -- I don't</p> <p>10 have a great understanding of what the form</p> <p>11 and requirements are for those type of</p> <p>12 announcements. So I wouldn't want to comment</p> <p>13 inaccurately.</p> <p>14 Q. Okay. Well, I would expect</p> <p>15 accuracy to be one of the requirements,</p> <p>16 correct?</p> <p>17 A. I would expect that -- I would</p> <p>18 expect faithful representation. Accuracy is a</p> <p>19 term which is difficult to find when -- based</p> <p>20 on provisional information.</p> <p>21 Q. Do you have any understanding of</p> <p>22 the headings Gross and Net as they're used in</p> <p>23 that calculation that's provided by Mr.</p> <p>24 Castell to you and others?</p> <p>25 A. No. I -- no, I don't know what</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 those columns specifically represented, no.</p> <p>3 Q. But if you just follow the math,</p> <p>4 it appears that on a line-by-line basis there</p> <p>5 is a gross number, there's a parenthetical</p> <p>6 which appears to be a deduction, and then a</p> <p>7 net number.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Okay. And this is all in the</p> <p>11 section titled FV Inventory.</p> <p>12 A. Yes.</p> <p>13 Q. And you recognize that as fair</p> <p>14 value inventory?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any understanding as</p> <p>17 to why, on or about the 16th of September,</p> <p>18 these adjustments were being made to the gross</p> <p>19 valuation numbers?</p> <p>20 A. No, because I don't have a sense</p> <p>21 of what the gross column represents. I don't</p> <p>22 have a sense of what might be deducted or why.</p> <p>23 Q. If you flip over to the next page,</p> <p>24 at the top of the page there's two lines. One</p> <p>25 line simply means minus and there's a negative</p>
Page 44	Page 45
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 1.5 number.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And then there's a little asterisk</p> <p>6 that states Unallocated Deduction. Not</p> <p>7 assigned to a specific asset class.</p> <p>8 Do you see that?</p> <p>9 A. Yeah.</p> <p>10 Q. And, again, were you aware on or</p> <p>11 around the 16th of a roving unallocated</p> <p>12 deduction to fair value?</p> <p>13 A. No.</p> <p>14 Q. This calculation rolls up to a</p> <p>15 negative goodwill number of 3 -- I presume</p> <p>16 billion -- pretax.</p> <p>17 Do you see that?</p> <p>18 A. Yeah.</p> <p>19 Q. What is negative goodwill?</p> <p>20 A. Goodwill, positive or negative, is</p> <p>21 an accounting concept which is calculated as</p> <p>22 the difference between net assets acquired and</p> <p>23 consideration paid in an acquisition.</p> <p>24 Q. So if you were going to calculate</p> <p>25 a gain on acquisition you would need to</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 calculate the negative goodwill; is that</p> <p>3 correct?</p> <p>4 A. If you were to put together the</p> <p>5 accounting for an acquisition you would</p> <p>6 calculate -- you would calculate goodwill, and</p> <p>7 depending on whether the goodwill is positive</p> <p>8 or negative, the treatment would differ. If</p> <p>9 goodwill is negative it would be included in</p> <p>10 the income statements as a profit.</p> <p>11 (Deposition Exhibit 393A, document</p> <p>12 bearing production numbers</p> <p>13 BCI-EX-(S)-00052197 through</p> <p>14 BCI-EX-(S)-00052198, marked for</p> <p>15 identification as of this date.)</p> <p>16 BY MR. TAMBE:</p> <p>17 Q. Sir, just before we go on to the</p> <p>18 exhibit that's been placed before you I just</p> <p>19 want to make sure I understood your last</p> <p>20 answer.</p> <p>21 A. Sure.</p> <p>22 Q. I believe you said if goodwill is</p> <p>23 negative it would be included in the income</p> <p>24 statement as a profit; is that right?</p> <p>25 A. For accounting purposes; that is</p>

Page 46

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 correct, yes.
3 Q. All right.
4 Sir, I've placed before you a
5 two-page document marked 393A. It's a cover
6 e-mail and a spreadsheet. Have you had a
7 chance to review the document?
8 A. I have, yes.
9 Q. The attachment, do you have an
10 understanding of what that attachment is?
11 A. It's a schedule which I did see at
12 the time which was produced by Lehman, I
13 believe. Yeah.
14 Q. If you'd have Exhibit 392A in
15 front of you. If you turn to page 2 of
16 Exhibit 392A, that's the calculation from Bill
17 Castell that we were looking at a few minutes
18 ago. That has a total asset number of 72.05.
19 Do you see that?
20 A. Yeah.
21 Q. And the spreadsheet in
22 Exhibit 393A has an Adj. total assets of
23 72.65.
24 Do you see that?
25 A. I do.

Page 48

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 BY MR. TAMBE:
3 Q. Sir, I've placed before you a
4 two-page document marked Exhibit 394A. Take a
5 moment to review it and let me know when
6 you're done.
7 (Document review.)
8 A. Okay.
9 Q. And you'll recognize at the top of
10 this exhibit, there's an e-mail exchange at
11 the top, the first page, and the top e-mail is
12 from James Walker to you and others.
13 Do you see that?
14 A. Yes.
15 Q. And the attachment is a marked-up
16 portion of what appears to be a balance sheet.
17 Do you see that?
18 A. Yes.
19 Q. Do you have an understanding as to
20 what this document is and what the handwritten
21 notations are?
22 A. My understanding is that this was
23 another version of a representation of assets
24 and liabilities based on information at the
25 time. It's clear that we were trying to tie

Page 47

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Do you have any understanding in
3 Exhibit 393A what the nature of the adjustment
4 is that's referred to in Adj. total assets?
5 A. No, I don't.
6 Q. And in Exhibit 393A which is the
7 Lehman-prepared document you testified about,
8 the Pure Payment and Comp Payment under
9 Liabilities, did you have an understanding on
10 the 16th what the source of those numbers was?
11 A. No, I didn't.
12 Q. As you sit here, do you know where
13 those numbers came from on the 16th?
14 A. No, I don't.
15 Q. Was it your understanding that
16 those numbers were inserted there to balance
17 out this balance sheet?
18 A. No. I don't have any
19 understanding of the source of any of the
20 numbers on the spreadsheet.
21 (Deposition Exhibit 394A, document
22 bearing production numbers
23 BCI-EX-(S)-00052200 through
24 BCI-EX-(S)-00052201, marked for
25 identification as of this date.)

Page 49

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 this out to some other document. During that
3 week there were many exercises of this nature
4 as understanding of the transaction and its
5 component parts changed.
6 So that was part of that ongoing
7 process.
8 Q. Any idea as to what you're trying
9 to tie this spreadsheet out to?
10 A. No.
11 Q. And is this your handwriting on
12 the second page of the exhibit?
13 A. No.
14 Q. 394A?
15 A. No.
16 Q. Do you know whose handwriting it
17 is?
18 A. I don't know.
19 (Deposition Exhibit 395A, document
20 bearing production numbers
21 BCI-EX-(S)-00052268 through
22 BCI-EX-(S)-00052270, marked for
23 identification as of this date.)
24 BY MR. TAMBE:
25 Q. Sir, I've placed before you a

Page 50

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 three-page document marked Exhibit 395A. Take
3 a moment to review it and let me know when
4 you're done.
5 (Document review.)
6 A. Okay.
7 Q. Now, this is an e-mail you'll see
8 from Bill Castell to several folks at Barclays
9 and other places.
10 Do you know what the purpose of
11 that this e-mail was? I see addresses here
12 for db.com. I assume that's deutschebank.com?
13 A. I don't know the people but db.com
14 is the standard e-mail ending for Deutsche
15 Bank, yes.
16 I don't have an understanding as
17 to the purpose for this.
18 Q. Okay.
19 A. It implies that there was a call
20 so...
21 Q. And there's a reference to an 0745
22 DD call. Does that have any meaning to you?
23 A. No. DD could mean a number of
24 things. I'm not sure.
25 Q. Okay. And this e-mail from Bill

Page 52

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Barclays group, over the next period of time.
3 I'm not sure exactly how long.
4 Q. And what you refer to as entity
5 allocations, what drove the decision as to
6 what entity was selected for allocating
7 particular assets?
8 A. I don't think there was a single
9 determining factor. As with any decision of
10 that nature you'd be considering a number of
11 things like infrastructure that was present in
12 the various entities. Capital. The normal
13 activities of the entities. These are issues
14 of a type which I would expect to feed into
15 it. But at a time which I recall being raised
16 at one time or another.
17 Q. How about tax considerations?
18 A. Tax considerations as well, yes.
19 Q. So that would be a fourth. It
20 wasn't included in one of the three you
21 mentioned.
22 A. They were examples.
23 Q. So let's make sure we covered all
24 the possible reasons why you might choose to
25 allocate in one entity versus another. You

Page 51

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Castell has another calculation of total
3 assets, total liabilities.
4 A. Um-hum.
5 Q. Do you know where these numbers
6 come from?
7 A. No. No, I don't know where he got
8 them from.
9 Q. Were you ever a participant in
10 discussions with analysts about this
11 transaction? External analysts about the
12 Lehman Barclays transaction?
13 A. No.
14 Q. In the week of the 15th, do you
15 recall discussions about how and where the
16 assets that were being acquired were going to
17 be booked? And by where I mean what entity.
18 What legal entity.
19 A. During that week I don't recall
20 any discussions along those lines, no.
21 Q. Okay. Subsequent to that week, do
22 you recall any discussions about how and where
23 the assets were going to be booked?
24 A. Yes. Yes, there were numerous
25 discussions around entity allocations within

Page 53

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 mentioned infrastructure. You mentioned
3 capital, by which I assume you mean regulatory
4 capital requirements?
5 A. Primarily. Yeah, it would seem to
6 be encapsulated in regulatory capital.
7 Q. Then you talked about normal
8 activities. So I guess you were allocating
9 the assets to entities that's consistent with
10 their normal activities. Is that what you
11 mean?
12 A. Yes.
13 Q. And then another consideration
14 would be tax.
15 A. Yes.
16 Q. You want to minimize the tax
17 burden on the enterprise as a whole; is that
18 right?
19 A. Well, I don't work in the tax
20 department so I wouldn't be able to say the
21 tax minimization is always the primary reason.
22 But tax considerations I would expect to be
23 considered -- I wouldn't be able to represent
24 that list of four generic categories as an
25 exhaustive list clearly.

Page 54	Page 55
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. In connection with the</p> <p>3 Lehman/Barclays transaction and the</p> <p>4 allocations of assets to particular Barclays</p> <p>5 entities, can you identify any other reason</p> <p>6 for the allocation other than these four that</p> <p>7 we've discussed?</p> <p>8 A. Not off the top of my head, no.</p> <p>9 MR. TAMBE: Let's just take a</p> <p>10 short break and we'll continue.</p> <p>11 THE WITNESS: Sure.</p> <p>12 (Recess taken.)</p> <p>13 BY MR. TAMBE:</p> <p>14 Q. Sir, I've placed before you a</p> <p>15 document that was previously marked as</p> <p>16 Exhibit 283A. It's a somewhat long e-mail</p> <p>17 chain. So if you want to start from the back</p> <p>18 and read your way up to the front, let me know</p> <p>19 when you're done and I'll ask you some</p> <p>20 questions.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. This e-mail chain, Exhibit 283A,</p> <p>24 starts off with an e-mail from you at the top</p> <p>25 to Caroline Owen and others.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. Yeah.</p> <p>4 Q. And you're asking for a</p> <p>5 coordinated approach on how assets are brought</p> <p>6 onto the Barclays balance sheet, correct?</p> <p>7 A. Yeah.</p> <p>8 Q. In your second paragraph of your</p> <p>9 e-mail you state, the second sentence, "I've</p> <p>10 heard nothing about an SPV plan and generation</p> <p>11 of gain in PLC..."</p> <p>12 And then the sentence goes on.</p> <p>13 A. Yeah.</p> <p>14 Q. One, what did you mean by SPV</p> <p>15 plan?</p> <p>16 A. There's a reference in Mark</p> <p>17 Rudduck's e-mail two down about potential sale</p> <p>18 to an SPV which is responding to a reference</p> <p>19 in Beatrice Montaudy's preceding e-mail of a</p> <p>20 plan to acquire assets through an SPV of</p> <p>21 Barclays.</p> <p>22 Q. Do you recall --</p> <p>23 A. At all times -- what I was saying</p> <p>24 there was that I hadn't heard about it and</p> <p>25 that if there were discussions on it that the</p>
Page 56	Page 57
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 broader finance needs to be involved.</p> <p>3 Q. Do you recall having had</p> <p>4 discussions with any of these people who are</p> <p>5 on this e-mail chain about an SPV plan?</p> <p>6 A. No, I'm not sure what plan</p> <p>7 Beatrice would have been talking about at that</p> <p>8 time.</p> <p>9 Q. And the other phrase you use in</p> <p>10 your e-mail was generation of gain in PLC.</p> <p>11 Do you see that? It's in your</p> <p>12 e-mail, the first e-mail.</p> <p>13 A. Yeah.</p> <p>14 Q. And when you refer to PLC you're</p> <p>15 talking about Barclays Bank PLC, correct?</p> <p>16 A. Yeah. I'm referring back to</p> <p>17 Beatrice's e-mail where she identifies the</p> <p>18 plan as being to acquire through SPV of BBPLC</p> <p>19 and sell to BCSL to recognize a gain in BBPLC.</p> <p>20 So I was -- I was saying I didn't know</p> <p>21 anything about such a plan.</p> <p>22 Q. Just so I get through the</p> <p>23 abbreviations, BBPLC is just Barclays Bank</p> <p>24 PLC, right?</p> <p>25 A. That's correct.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And BCSL is?</p> <p>3 A. It's Barclays Capital Securities,</p> <p>4 Ltd. I'm 99 percent sure that's the name of</p> <p>5 it.</p> <p>6 Q. Okay. And both the PLC and the</p> <p>7 limited company are non-US companies, correct?</p> <p>8 A. They are both UK companies.</p> <p>9 Q. Okay. And your reference or the</p> <p>10 reference to recognition of gain --</p> <p>11 A. They're both UK companies. That's</p> <p>12 not to say that US operations and assets are</p> <p>13 not owned by those. So, for example, BBPLC</p> <p>14 does have a New York branch.</p> <p>15 Q. And apart from those two entities,</p> <p>16 you also have a US broker/dealer entity,</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And what's the name of that</p> <p>20 entity?</p> <p>21 A. Barclays Capital, Inc. I think</p> <p>22 is -- BCI is its normal reference.</p> <p>23 Q. And if you go to the third page of</p> <p>24 Exhibit 283A, that's an e-mail from Beatrice</p> <p>25 Montaudy, Mark Rudduck, and Jasen Yang.</p>

Page 58

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Do you see that?
3 A. Yes.
4 Q. And she makes a reference in there
5 to the 46 percent marginal tax rate applicable
6 to BCI.
7 Do you see that?
8 A. Yes.
9 Q. And so that's the US tax rate
10 applicable to the US broker/dealer, correct?
11 A. That's how I'd read the sentence.
12 I don't have a particular detailed knowledge
13 of the tax regimen.
14 Q. In that same sentence, earlier in
15 that sentence she makes a reference to the
16 following: "It was essential to the valuation
17 calculation that the 'discount' between the
18 value of the assets acquired and the purchase
19 price not be subject to the 46 percent
20 marginal US tax rate applicable to BCI."
21 Do you see that?
22 A. I do.
23 Q. Do you have any understanding as
24 to what she meant by that?
25 A. No, I don't know.

Page 60

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 tax department?
3 A. I'm not sure. At the time she
4 reported to Susan Grbic. She was the US head
5 of tax.
6 Q. And do you know what her position
7 is now, Beatrice Montaudy's, if she's still
8 with the bank?
9 A. She's still in the US tax
10 department, yes.
11 Q. And her position?
12 A. I don't know.
13 Q. As the week goes on, Tuesday,
14 Wednesday, Thursday, that week of the 15th of
15 September, was it your understanding that the
16 nature of the transaction was changing?
17 A. I don't recall precisely what day
18 I became aware of that but certainly by the
19 Monday when a deal had been executed I was
20 aware that the form of the deal was different
21 than that envisaged previously.
22 Q. So you're comparing Monday, the
23 15th, to the weekend.
24 A. Yes.
25 Q. Now moving further in the week,

Page 59

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. And the use of the word "discount"
3 in her sentence, was it your understanding
4 that the differential in the value of the
5 assets acquired versus the purchase price paid
6 was a discount?
7 MR. SHAW: Objection to form.
8 A. I don't recall reading the e-mail
9 chain down that far. My response as I read
10 and recollect it was a response to the e-mail
11 from Caroline suggesting that I get involved.
12 So this is certainly the first time I recall
13 seeing the sentence and I don't have any sense
14 as to what Beatrice meant by it.
15 Q. And other than this e-mail chain,
16 did you hear anyone else at Barclays refer to
17 that differential to mean the value of the
18 assets acquired and the purchase price as a
19 discount?
20 A. No.
21 Q. What is Beatrice Montaudy's
22 position?
23 A. She works in the tax department in
24 New York.
25 Q. And what's her position within the

Page 61

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 was it your understanding that the deal that
3 was discussed and the deal that was the
4 subject of the acquisition sheets we were
5 looking at before, the Monday/Tuesday
6 transaction, did that change during the course
7 of the week?
8 A. So from when to when?
9 Q. So starting Monday, the 15th, the
10 day that Lehman declares bankruptcy, you go
11 back, you reengage in discussions with Lehman
12 on the 15th.
13 A. Yeah.
14 Q. That deal that evolves from those
15 discussions, does that change during the
16 course of the week as far as you know?
17 A. Sorry. That was the question I
18 was responding to previously. I must have
19 misunderstood the question.
20 Yes. It was -- so over the week
21 from the 15th to Monday, the 22nd when the
22 deal was executed, I understood that the form
23 of the deal changed.
24 Q. As you sit her, what's your
25 understanding of the how the form of the deal

Page 62

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 changed from the 15th to the 22nd?

3 So not what you knew at the time
4 but what you know now with the benefit of
5 everything that's happened.

6 A. The main thing I know is that the
7 deal that was executed finally there may have
8 been changes in the form which I was not
9 specifically aware of. The change in the form
10 I was aware of was that we were entering into
11 a repo type transaction involving the Fed but
12 that was the principal difference that I was
13 aware of.

14 Q. Now, going back to the week of the
15 15th, did you become aware of this change to a
16 repo type transaction during that week?

17 A. I can't recall precisely when I
18 became aware of that because I know I was
19 definitely aware of it by the 22nd. It's
20 possible I was aware of that sometime before
21 then, but I can't recall accurately whether
22 that was the case or not.

23 Q. Do you recall what role you played
24 on Thursday, the 18th, Friday the 19th, over
25 the weekend, onto the 22nd? What were you

Page 64

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 from -- I was less involved and interested in
3 how things developed during the week because I
4 wasn't particularly involved in that.

5 What I was interested in was the
6 deal which ended up getting done. So it was
7 based on the deal documents and conversations
8 with those who understood elements of any one
9 asset class. Rather than -- rather than any
10 sort of development or other sets of
11 discussions.

12 Q. In terms of working with the
13 balance sheet which was a document that you
14 said was an iterative document that you were
15 working with, how did you obtain information
16 that you put into your work-in-progress
17 balance sheet?

18 A. It was principally a process of
19 liaison and discussion across finance and with
20 others. So I was speaking with many people
21 over the course of months to at first get an
22 understanding of the nature of the transaction
23 and the assets and liabilities that had been
24 acquired. And then later at a more granular
25 level to get an accurate representation for

Page 63

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 doing during that time frame?

3 A. I don't accurately recall. I was
4 involved in discussions around the balance
5 sheet I was maintaining so including lofty
6 placeholder numbers at that stage obviously
7 and speaking to people to try to improve
8 those. But beyond that general level I don't
9 recall specific involvements during those
10 days.

11 Q. Do you have any understanding of
12 any efforts made by Lehman and Barclays to
13 identify additional assets to be delivered by
14 Lehman to Barclays on Friday, the 19th, and
15 then the weekend that followed?

16 A. No.

17 Q. Was it your -- is it your
18 understanding that all of the assets acquired
19 by Barclays from Lehman, the deal that was
20 finally executed, are also assets that came
21 over as a result of the repo?

22 A. My understanding was that the repo
23 transaction was involved but to my
24 understanding the assets that were acquired or
25 the liabilities that were incurred were

Page 65

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 our books and records and annual report.

3 So it was a project size involving
4 a huge number of people in the back.

5 Q. And did you actually sit down with
6 the Asset Purchase Agreement and use that as a
7 guide to helping you create the balance sheet?

8 A. The Asset Purchase Agreement was
9 one of the documents which I looked at, yes.

10 Q. And did you actually annotate the
11 Asset Purchase Agreement against the changes
12 that were made in the clarification letter?

13 A. I made no annotations that I can
14 recall, no.

15 Q. Okay.

16 A. I -- no.

17 Q. Were you aware of changes to the
18 Asset Purchase Agreement that were made via
19 the clarification letter?

20 A. I wasn't aware of changes. I
21 was -- the best way of putting it would be
22 that I looked at the Asset Purchase Agreement,
23 the amendment to the Asset Purchase Agreement,
24 and the clarification letter as a
25 representation of the transaction. I wasn't

Page 66

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 differentiating between the two. I had to
3 look at all of them to get a sense of the
4 transaction that was done.
5 Q. When's the first time you recall
6 seeing the Asset Purchase Agreement?
7 A. I definitely saw -- I'd definitely
8 seen it by the 18th. It's possible I may have
9 seen a draft a day or two before that. I say
10 a draft. A version or a copy. I definitely
11 have an e-mail which indicates that I had it
12 on the 18th because I looked for that in
13 preparing for this deposition.
14 Q. Do you recall what the event or
15 circumstance was that makes you so sure that
16 you had it by the 18th? You saw an e-mail?
17 A. I saw an e-mail.
18 Q. Sorry. Do you know why you were
19 provided with a copy on the 18th?
20 A. Because I was responsible for
21 putting together the acquisition balance
22 sheets and it was important I had a sense of
23 the transaction so I was seeking to get copies
24 of relevant deal documentation.
25 Q. When's the first that you saw the

Page 68

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 done.
3 MR. SHAW: I'll note that there
4 appears to be an erroneous or additional
5 unknown date on this at the very top.
6 I'm not sure if it's just an artifact of
7 the document production.
8 MR. TAMBE: Yeah. The first two
9 lines on page 1 are an artifact of the
10 document production. As is the date
11 that appears in the bottom left-hand
12 corner.
13 (Document review.)
14 A. Okay.
15 Q. And you'll see your cover e-mail
16 is an e-mail from you to Martin Kelly at
17 Lehman.
18 Do you see that?
19 A. Yes.
20 Q. And others.
21 A. Yes.
22 Q. And who is Martin Kelly?
23 A. At that time?
24 Q. Yeah, at that time.
25 A. Martin was -- I'm not sure

Page 67

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 clarification letter?
3 A. Again, in preparing for the
4 deposition I had looked at my e-mails and I
5 definitely have an e-mail on the 22nd which
6 had the clarification letter attached to it.
7 Q. Did you find any indication in
8 preparing for your deposition that you
9 received a copy of the clarification letter
10 prior to the 22nd?
11 A. No.
12 Q. And in terms of the process you
13 followed in putting together the balance sheet
14 you actually sat down with the operative legal
15 documents to help you prepare the balance
16 sheet?
17 A. I referred to them, yes. Yes.
18 (Deposition Exhibit 396A,
19 three-page document bearing production
20 numbers 464242, marked for
21 identification as of this date.)
22 BY MR. TAMBE:
23 Q. Sir, I've placed before you a
24 three-page document marked Exhibit 396A. Take
25 a moment to review it and tell me when you're

Page 69

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 precisely what his position was but he was a
3 senior member of finance for Lehman.
4 Q. Okay. And what role does he have
5 now?
6 A. He's now the CFO of the Americas
7 for Barclays Capital.
8 Q. And if you follow this e-mail
9 chain it starts with a request from Patrick
10 Clackson to James Walker trying to acquire --
11 trying to obtain a balance sheet.
12 Do you see that?
13 A. Yeah.
14 Q. And then James sends that request
15 on to Martin Kelly.
16 Do you see that?
17 A. Yeah.
18 Q. And there's an e-mail then from
19 Martin to James Walker and to you with some of
20 the numbers on the balance sheet.
21 Do you see that?
22 A. I see the e-mail, yes.
23 Q. Just in terms of process, let me
24 ask you why was Barclays reaching out to
25 Lehman for an opening balance sheet?

Page 70	Page 71
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 MR. SHAW: Objection, foundation.</p> <p>3 Q. If you know.</p> <p>4 A. I don't know why James</p> <p>5 specifically sent it to Martin. During the</p> <p>6 period we were speaking with Lehman employees</p> <p>7 who had familiarity with some of the acquired</p> <p>8 assets for some information. But I</p> <p>9 wouldn't -- I wouldn't know precisely why</p> <p>10 James at that time thought that Martin was the</p> <p>11 best source of information for the numbers at</p> <p>12 that stage.</p> <p>13 Q. And as you developed your balance</p> <p>14 sheet, the one that you worked on --</p> <p>15 A. Yeah.</p> <p>16 Q. -- did you work off of the Lehman</p> <p>17 prepared balance sheet or did you create a new</p> <p>18 balance sheet from scratch?</p> <p>19 A. I created a new balance sheet from</p> <p>20 scratch.</p> <p>21 Q. Did you compare your balance sheet</p> <p>22 to the Lehman balance sheet?</p> <p>23 A. There wasn't any Lehman balance</p> <p>24 sheet as such that I was aware of.</p> <p>25 Q. And what I mean by the Lehman</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 balance sheet, the Lehman-prepared balance</p> <p>3 sheet.</p> <p>4 A. Apart from this list here I'm not</p> <p>5 aware of a parallel Lehman balance sheet</p> <p>6 existing.</p> <p>7 (Deposition Exhibit 397A, document</p> <p>8 bearing production numbers</p> <p>9 BCI-EX-(S)-00013605 through</p> <p>10 BCI-EX-(S)-00013606 with attachment,</p> <p>11 marked for identification as of this</p> <p>12 date.)</p> <p>13 BY MR. TAMBE:</p> <p>14 Q. Sir, I've handed you a document</p> <p>15 marked Exhibit 397A. It's a cover e-mail, a</p> <p>16 placeholder sheet, and a spreadsheet. Take a</p> <p>17 moment to review it and let me know when</p> <p>18 you're done.</p> <p>19 (Document review.)</p> <p>20 A. Sure.</p> <p>21 Q. Have you had a chance to review</p> <p>22 it?</p> <p>23 A. Yeah.</p> <p>24 Q. If you look at the cover e-mail,</p> <p>25 the second e-mail on the first page is an</p>
Page 72	Page 73
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 e-mail from Robert Azerad to you, James</p> <p>3 Walker, and others.</p> <p>4 Do you see that?</p> <p>5 A. Yeah.</p> <p>6 Q. And it attaches a document that's</p> <p>7 titled Copy of Opening Balance Sheet. There's</p> <p>8 some more notations after that.</p> <p>9 A. Sure.</p> <p>10 Q. And the attachment appears to be a</p> <p>11 spreadsheet.</p> <p>12 Do you see that?</p> <p>13 A. Yeah.</p> <p>14 Q. And you'll see that several of the</p> <p>15 items on that spreadsheet tie into the numbers</p> <p>16 on the other exhibit we were looking at,</p> <p>17 Exhibit 396A.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Does this refresh your</p> <p>21 recollection at all that you received a</p> <p>22 spreadsheet from Lehman setting out the</p> <p>23 opening balance sheet?</p> <p>24 A. Well, I clearly received this</p> <p>25 spreadsheet, yes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you have any discussions with</p> <p>3 Lehman about the valuation of the total assets</p> <p>4 that's reflected on Exhibit 397A?</p> <p>5 A. No. No.</p> <p>6 Q. And did you have an understanding</p> <p>7 as to the source of that information?</p> <p>8 A. No, I don't have any understanding</p> <p>9 as to the source.</p> <p>10 (Deposition Exhibit 398A, two-page</p> <p>11 document bearing production number</p> <p>12 44230, marked for identification as of</p> <p>13 this date.)</p> <p>14 BY MR. TAMBE:</p> <p>15 Q. Sir, I've handed you a two-page</p> <p>16 document marked Exhibit 397A. Take a moment</p> <p>17 to review that and let me know when you're</p> <p>18 done.</p> <p>19 (Document review.)</p> <p>20 Q. Oh, I'm sorry. 398A.</p> <p>21 A. Okay.</p> <p>22 Q. And in Exhibit 398A in the</p> <p>23 middle -- towards the bottom of the first page</p> <p>24 there's an e-mail from you to Martin Kelly.</p> <p>25 Do you see that?</p>

Page 74

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. Yes.
3 Q. And you're in particular asking
4 him about his \$44.88 billion number.
5 Do you see that?
6 A. Yes.
7 Q. And you ask him whether the
8 additional 1.9 billion of assets separate to
9 the 15(c)(3) is part of that 44.88 number.
10 Do you see that?
11 A. I see that, yeah.
12 Q. What's your understanding of what
13 the 1.9 billion of additional assets is a
14 reference to?
15 A. The 1.9 is a reference there to
16 securities which were due to Barclays clearing
17 process. And the purpose of my mail was
18 essentially to ensure that we weren't double
19 counting when trying to identify the assets
20 that needed to be valued.
21 Q. And you see the response from
22 Martin Kelly to you where he says, "Includes
23 the 1.9B."
24 Do you see that?
25 A. Yes.

Page 76

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 ultimately became Schedule B; is that right?
3 A. I don't have enough of an
4 understanding about the precise composition of
5 Schedule B as it relates to understanding
6 there. My understanding was that Barclays was
7 to due to receive the assets from the clearing
8 box and we received some but not others at
9 that time.
10 Q. Putting on your 30(b)(6) hat now
11 for a moment.
12 A. Yeah.
13 Q. What is your understanding of
14 Schedule A to the Asset Purchase Agreement?
15 A. My understanding of Schedule A was
16 that it was the representation of the assets
17 which were coming across to Barclays against
18 the reverse repo.
19 Q. So your understanding is that all
20 of the assets that are listed on Schedule A
21 were assets that had been pledged to the Fed
22 and were transferred to Barclays.
23 MR. SHAW: Objection.
24 Mischaracterizes the prior testimony.
25 Foundation.

Page 75

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Do you recall further discussions
3 on this topic as to whether the 44.88 included
4 the 1.9?
5 A. Yes.
6 Q. And do you recall that ultimately
7 you resolved the 1.9 was not included as part
8 of the 44.88?
9 A. Well, if we're using shorthand for
10 the 1.9 and the 44.88 to refer to assets from
11 the clearance box and assets which came across
12 the repo, then the conclusion of those
13 discussions was that not all of the assets
14 from the clearance boxes had come across. And
15 there was some which were still to be
16 received. The 1.9, 2.9, and 44.88 were not --
17 did not end up being represented as Barclays'
18 view of the fair value of the assets which is
19 the numbers that are represented in that
20 financial statement.
21 I'm not sure what the source of
22 those two numbers themselves and the values
23 was.
24 Q. And it's your understanding that
25 the assets in the clearance boxes is what

Page 77

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. You can answer if you understand
3 the question.
4 A. I was aware that there was a
5 reconciliation process which was required of
6 Schedule A at the detailed CUSIP level but
7 it's my understanding that was what Schedule A
8 was intended to represent, yes.
9 Q. Just so we're clear, every CUSIP
10 that appears on Schedule A it is your
11 understanding as the 30(b)(6) witness for
12 Barclays that every one of those CUSIPs was a
13 CUSIP that had been pledged to the Fed?
14 A. No. That's not my understanding.
15 MR. SHAW: And I'm going to object
16 this witness has been offered only with
17 respect to the Schedule A and Schedule B
18 issues to talk about the Barclays effort
19 to value the securities that appear on
20 Schedule A and Schedule B.
21 MR. TAMBE: Okay. So let's just
22 mark the 30(b)(6) and maybe it's already
23 been marked. Has it already been
24 marked?
25 MR. McMAHON: This one I think has

Page 78	Page 79
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 not been.</p> <p>3 MR. TAMBE: Okay. So then let's</p> <p>4 mark it. We'll just mark the 30(b)(6)</p> <p>5 notice so we have some precision as to</p> <p>6 what he's being offered for and what</p> <p>7 he's not being offered for.</p> <p>8 MR. SHAW: Okay.</p> <p>9 (Pause on the record.)</p> <p>10 BY MR. TAMBE:</p> <p>11 Q. Sir, I've placed before you a</p> <p>12 document that's been marked 81B.</p> <p>13 MR. TAMBE: My first question is</p> <p>14 really a point of clarification for your</p> <p>15 counsel. On items 1 and 2 of Schedule A</p> <p>16 of this 30(b)(6) notice for what -- for</p> <p>17 what subjects or topics is Mr. Romain</p> <p>18 the 30(b)(6) witness for Barclays?</p> <p>19 MR. SHAW: Mr. Romain is a</p> <p>20 30(b)(6) witness on the issue of</p> <p>21 Barclays' efforts to value the</p> <p>22 securities that were on Schedule A and</p> <p>23 Schedule B.</p> <p>24 BY MR. TAMBE:</p> <p>25 Q. Taking off your 30(b)(6) hat, do</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 you have any understanding as to how the</p> <p>3 assets that came to be listed on Schedule A</p> <p>4 and Schedule B were selected?</p> <p>5 A. No, I don't. No.</p> <p>6 Q. And taking off your 30(b)(6) hat,</p> <p>7 do you have any understanding as to how the</p> <p>8 assets on Schedule A and Schedule B were</p> <p>9 transferred to Barclays?</p> <p>10 A. No, I don't. No.</p> <p>11 Q. Do you have an understanding as to</p> <p>12 whether the assets on Schedule A and Schedule</p> <p>13 B have, in fact, been transferred to Barclays?</p> <p>14 A. In terms of -- at the CUSIP level</p> <p>15 I was aware there was a reconciliation process</p> <p>16 so my understanding is that is not a -- that's</p> <p>17 not a perfectly accurate statement was my</p> <p>18 understanding. My involvement with the</p> <p>19 Schedule A and Schedule B assets was in</p> <p>20 relation to ensuring that the assets that were</p> <p>21 received by Barclays were the properly</p> <p>22 recorded value. The process by which they</p> <p>23 came to be transferred to Barclays is an area</p> <p>24 which I don't have particular insight into.</p> <p>25 (Pause on the record.)</p>
Page 80	Page 81
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Sir, I've placed before you a</p> <p>3 document marked previously as Exhibit 86B.</p> <p>4 Would you take a moment to look at this</p> <p>5 spreadsheet and let me know when you're done.</p> <p>6 (Document review.)</p> <p>7 A. Okay.</p> <p>8 Q. When you talked about the</p> <p>9 valuation of the Schedule A and Schedule B</p> <p>10 assets, does this document, Exhibit B, relate</p> <p>11 to that process in any way?</p> <p>12 A. It does, yes.</p> <p>13 Q. Is 86B the summary level valuation</p> <p>14 of the Schedule A assets?</p> <p>15 A. Yeah. It's the summary level</p> <p>16 valuation for -- yeah, for those assets.</p> <p>17 Q. So now with your 30(b)(6) hat</p> <p>18 firmly on I'm going to ask you to explain to</p> <p>19 me at the summary level from Exhibit 86B what</p> <p>20 is the information that's in 86B. And you can</p> <p>21 start with the spreadsheet and go by rows or</p> <p>22 columns. Describe this collection of</p> <p>23 information.</p> <p>24 MR. SHAW: Before we do, can we</p> <p>25 just confirm that the witness believes</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 this was the final version of that?</p> <p>3 MR. TAMBE: Sure.</p> <p>4 Q. Is it the final version?</p> <p>5 A. It looks like the final version.</p> <p>6 To be definitive I would need to compare -- to</p> <p>7 be definitive sitting here right now I would</p> <p>8 need to compare the numbers with those on the</p> <p>9 acquisition balance sheet.</p> <p>10 Q. And we had earlier this morning</p> <p>11 looked at what you believed to be the final</p> <p>12 version of the acquisition balance sheet.</p> <p>13 A. Yeah.</p> <p>14 Q. Let me see if I can locate that.</p> <p>15 Which is Exhibit 377A.</p> <p>16 A. Yeah.</p> <p>17 Q. Are you doing that comparison now,</p> <p>18 sir?</p> <p>19 A. I am, yes.</p> <p>20 Yes. This is the final version.</p> <p>21 There were some immaterial off-line</p> <p>22 adjustments made just to tidy up right before</p> <p>23 the financial statements were published but</p> <p>24 the differences were very minor.</p> <p>25 Q. So keep before you the final</p>

Page 82	Page 83
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 acquisition balance sheet which is 377. Also</p> <p>3 keep in front of you 86B. I'm going to add</p> <p>4 one more document to your pile for now and</p> <p>5 that's a document previously marked as</p> <p>6 Exhibit 87B and if you could confirm that that</p> <p>7 is the valuation of the Schedule B assets.</p> <p>8 A. Sorry. I think there's been --</p> <p>9 there's confusion there.</p> <p>10 Q. Okay.</p> <p>11 A. Exhibit 86B is the valuation of</p> <p>12 the assets which were received by Barclays,</p> <p>13 whether Schedule A or Schedule B.</p> <p>14 Q. All right.</p> <p>15 A. The Exhibit 87B is the valuation</p> <p>16 of the -- of securities which were received on</p> <p>17 or around the 22nd of September from JPMorgan</p> <p>18 Chase.</p> <p>19 Q. Okay. No, you're absolutely</p> <p>20 right. Okay. So going back to 86B, 86B</p> <p>21 includes both Schedule A and Schedule B.</p> <p>22 A. Yeah. It includes all of the</p> <p>23 Schedule A and Schedule B assets that were</p> <p>24 received around -- well, around the time of</p> <p>25 the deal. So yes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. All right. So looking at -- and</p> <p>3 87B, is that a final schedule as well, if you</p> <p>4 can confirm that?</p> <p>5 A. It is, yes.</p> <p>6 Q. Let's start with 87B which is the</p> <p>7 JPM -- it has the title JPM assets.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And putting on your 30(b)(6) hat</p> <p>11 which should remain firmly on this whole</p> <p>12 series of questions.</p> <p>13 A. Sure.</p> <p>14 Q. Describe for me what this</p> <p>15 spreadsheet is.</p> <p>16 A. This spreadsheet is a summary of a</p> <p>17 valuation of those assets designed for</p> <p>18 inclusion in our books and records and in our</p> <p>19 financial statement disclosures.</p> <p>20 Q. And going across the columns,</p> <p>21 column A of this spreadsheet lists -- these</p> <p>22 are the top third asset categories.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. There's a phrase there, Portfolio</p>
Page 84	Page 85
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 3. Does that have any meeting to you, sir?</p> <p>3 A. Portfolio 3 was the term used to</p> <p>4 refer to the JPMorgan assets.</p> <p>5 Q. And then you have several asset</p> <p>6 categories. Lines 13 and 14 have the initials</p> <p>7 PMTG and PMTG unknown.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What is PMTG?</p> <p>11 A. PMTG is a group within the firm.</p> <p>12 It's a business line. It relates -- let me</p> <p>13 get this correct. Principal mortgage trading</p> <p>14 group I think is the full name.</p> <p>15 Q. There's a separate line item, line</p> <p>16 6, which states Agency Mortgage.</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. Do you know if any agency</p> <p>19 mortgages are included within PMTG?</p> <p>20 A. Well, the line for PMTG is not</p> <p>21 supposed to indicate that these were all</p> <p>22 assets of a PMTG type. That group wouldn't</p> <p>23 typically trade in some of these items. The</p> <p>24 significance here is that PMTG were the group</p> <p>25 that were taking responsibility for</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 coordinating the valuation of the acquired</p> <p>3 assets from a business perspective.</p> <p>4 So what happened was that</p> <p>5 initially assets were taken into a central</p> <p>6 pot, if you like, such that they could be</p> <p>7 considered, you know, as part of the</p> <p>8 acquisition.</p> <p>9 Subsequent to that assets were</p> <p>10 transferred to the appropriate group that</p> <p>11 would trade in those asset classes as a data</p> <p>12 matter also in the Street or whatever decision</p> <p>13 was made with those assets subsequent to</p> <p>14 acquisition. But PMTG were responsible until</p> <p>15 that happened from a business perspective.</p> <p>16 Q. So assets that would have come</p> <p>17 over from JPMorgan obviously would not have</p> <p>18 had a PMTG tag on them. They would have been</p> <p>19 agency mortgages, corporates, munies, et</p> <p>20 cetera, right?</p> <p>21 A. All asset classes.</p> <p>22 Q. If you look behind the line 13</p> <p>23 PMTG does it break out into separate asset</p> <p>24 classes?</p> <p>25 A. The breakout of the asset classes</p>

Page 86	Page 87
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 is rows 6 to 10.</p> <p>3 Oh, in terms of the PMTG item.</p> <p>4 Q. Yes.</p> <p>5 A. Right. I may have misunderstood</p> <p>6 the question then.</p> <p>7 The PMTG -- the non-PMTG items are</p> <p>8 principally the ones in 6 to 10. The items in</p> <p>9 row 13 would have been the ones which, by</p> <p>10 nature, were more relevant to PMTG as a group.</p> <p>11 But PMTG were responsible for all of them</p> <p>12 until they were transferred out of this sort</p> <p>13 in effect pool which the assets were initially</p> <p>14 transferred into. As a matter of practice</p> <p>15 they were our single point liaison for the</p> <p>16 Lehman acquisition.</p> <p>17 Q. All right. Column B is titled</p> <p>18 Notional. And what's your understanding of</p> <p>19 what that means?</p> <p>20 A. The contractual notional of the</p> <p>21 underlying assets.</p> <p>22 Q. Column C is -- well, before we go</p> <p>23 to C, when you say contractual notional that</p> <p>24 is the principal amount owing on those</p> <p>25 securities?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes. The principal value, yes.</p> <p>3 Q. Column C is FO value. Does that</p> <p>4 mean front office value?</p> <p>5 A. It does, yes.</p> <p>6 Q. And whose front office?</p> <p>7 A. Our front office.</p> <p>8 Q. What --</p> <p>9 A. Barclays, sorry.</p> <p>10 Q. What is the significance of a</p> <p>11 front office value?</p> <p>12 MR. SHAW: Objection.</p> <p>13 Q. What does it mean?</p> <p>14 A. The process by which assets are</p> <p>15 valued within Barclays is that first off the</p> <p>16 front office would value. The second line of</p> <p>17 consideration is that price testing will occur</p> <p>18 within the product control group within</p> <p>19 finance. So the initial marking of any book</p> <p>20 including this book would be done by the front</p> <p>21 office.</p> <p>22 Q. And does the front office include</p> <p>23 the traders who trade these products?</p> <p>24 A. Yes. The front office would be</p> <p>25 the traders.</p>
Page 88	Page 89
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Column D is JP value.</p> <p>3 A. Yes.</p> <p>4 Q. And that's the value -- well, what</p> <p>5 is that?</p> <p>6 A. That's the value that JPMorgan</p> <p>7 were contributing to the securities on the</p> <p>8 30th of September.</p> <p>9 Q. So both column C and column D are</p> <p>10 30th of September values.</p> <p>11 A. That's correct.</p> <p>12 Q. Do you know when this particular</p> <p>13 sheet, 87B, was prepared?</p> <p>14 A. There were -- again, there were</p> <p>15 multiple versions of this as our understanding</p> <p>16 of the assets developed. The -- until a final</p> <p>17 version was produced which was shortly before</p> <p>18 the annual report was produced.</p> <p>19 Q. When was the earliest version of</p> <p>20 this document prepared, 87B?</p> <p>21 A. The earliest version in that form</p> <p>22 would have been shortly after the 22nd of</p> <p>23 December. Because we weren't able to -- the</p> <p>24 appropriate value for us to include in our</p> <p>25 books and records was the value of the</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 inventory on the day we received the items,</p> <p>3 being the 22nd of December.</p> <p>4 Prior to that there were -- there</p> <p>5 were understandings of what assets we were</p> <p>6 expecting to receive and therefore preliminary</p> <p>7 versions. But nothing which had data which</p> <p>8 was struck to a date which would have been</p> <p>9 appropriate for inclusion could have existed</p> <p>10 before the 22nd of December.</p> <p>11 Q. The column C and column D are</p> <p>12 values as of the 30th of September, right?</p> <p>13 A. Yeah.</p> <p>14 Q. Why was that date picked?</p> <p>15 A. It was picked largely for</p> <p>16 practical reasons. It was a month-end. It</p> <p>17 didn't have any significance for books and</p> <p>18 records. Which was the primary purpose of</p> <p>19 this spreadsheet.</p> <p>20 Q. Was there any discussion within</p> <p>21 Barclays at valuing both doing a front office</p> <p>22 value and a JP value of these JPM assets as of</p> <p>23 the 22nd of September 2008?</p> <p>24 A. Sorry. I don't understand the --</p> <p>25 Q. Was there any discussion of doing</p>

Page 90	Page 91
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 the valuation as of the 22nd of September as</p> <p>3 opposed to the 30th of September?</p> <p>4 A. There was discussion with auditors</p> <p>5 as to what the appropriate date to include in</p> <p>6 our books and records was for these. The two</p> <p>7 dates -- the two relevant dates were the 22nd</p> <p>8 of December and the 22nd of September.</p> <p>9 Because you've got the transaction date and</p> <p>10 you've got the date you receive the assets and</p> <p>11 there's two different ways of viewing the</p> <p>12 transaction from an accounting perspective</p> <p>13 purely the decision which was reached was to</p> <p>14 use the 22nd of December.</p> <p>15 Q. How did Barclays calculate its</p> <p>16 front office values as of the 30th of</p> <p>17 September for these assets which it did not</p> <p>18 receive until the 22nd of December?</p> <p>19 A. I can talk to the general process</p> <p>20 of valuation as at the date. In terms of how</p> <p>21 the front office went about its -- how it went</p> <p>22 about it in a historical sense, the processes</p> <p>23 would have been the same and were the same.</p> <p>24 But struck at a different date. We had the</p> <p>25 items -- we had the identity of the items. So</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 it's a case of valuing as at based off market</p> <p>3 data which is relevant as of that date. So</p> <p>4 I'm not sure if I'm understanding the</p> <p>5 question.</p> <p>6 Q. I think towards the end of your</p> <p>7 answer you answered it. So let me see if I</p> <p>8 understand it.</p> <p>9 A. Yeah.</p> <p>10 Q. For the items that you received</p> <p>11 from JPMorgan Chase on December 22nd, on or</p> <p>12 about December 22nd, your traders went back to</p> <p>13 market data to try to value those assets as of</p> <p>14 the 30th of September; is that right?</p> <p>15 A. There had been previously drafts</p> <p>16 of expected values which predated the 22nd of</p> <p>17 December. And the 30th of September was a</p> <p>18 date which was looked at on a consistent basis</p> <p>19 as the understanding as to the identity of the</p> <p>20 assets that we would receive changed. And</p> <p>21 then when we reached the 22nd of December, the</p> <p>22 22nd of -- the valuation as of the date the</p> <p>23 items were received were updated and were</p> <p>24 focused upon. There was not a great deal of</p> <p>25 focus on the 30th of September values at that</p>
Page 92	Page 93
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 time because their significance at that time</p> <p>3 was marginal.</p> <p>4 Q. Again, just so I understand what</p> <p>5 you're telling me, are you saying that you</p> <p>6 knew as early as the 30th of September the</p> <p>7 list of assets that you eventually received on</p> <p>8 December 22nd?</p> <p>9 A. No.</p> <p>10 Q. No. When did you first know what</p> <p>11 specific assets you would be receiving from</p> <p>12 JPMorgan Chase?</p> <p>13 A. I'm not sure what date that that</p> <p>14 was absolutely finalized.</p> <p>15 Q. So, again, I'm going back to this</p> <p>16 process that was followed in coming up the</p> <p>17 with the column C values which is the front</p> <p>18 office values. Was it a process where your</p> <p>19 traders in December, sometime in December got</p> <p>20 a list of the JPMorgan Chase assets by CUSIP</p> <p>21 number and went back to historical pricing</p> <p>22 data to try and price those as of the 30th of</p> <p>23 September.</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And just focusing on that</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 exercise, why didn't they price them as of the</p> <p>3 22nd of September? For that column, column C.</p> <p>4 A. That exercise wasn't done for the</p> <p>5 first time until the 22nd of December. The</p> <p>6 understanding as to the items would have</p> <p>7 changed as understanding as to what items</p> <p>8 would be received changed in the days and</p> <p>9 weeks preceding the 22nd of December. So it</p> <p>10 wasn't a new process, let's value them on the</p> <p>11 30th of September, on the 22nd of December.</p> <p>12 That wasn't the first time where people were</p> <p>13 looking at that. Over the period -- over the</p> <p>14 period from the acquisition date up until the</p> <p>15 22nd of December there was an ongoing process</p> <p>16 to try and get a handle on what value - what</p> <p>17 assets and what value of assets we would end</p> <p>18 up receiving. And that was again an iterative</p> <p>19 process. This just represents a part of that</p> <p>20 being two month-end values and the actual</p> <p>21 value that we received.</p> <p>22 Q. Let me try it another way.</p> <p>23 Was September 30th the month end</p> <p>24 picked because there was better or more</p> <p>25 complete pricing data available as of the 30th</p>

Page 94

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 of September as opposed to the 22nd of
3 September?
4 A. I'm not sure.
5 Q. And do you have any sense
6 generally whether this collection of assets
7 you received from JPMorgan Chase increased in
8 value or decreased in value from the 22nd of
9 September to the 30th of September?
10 A. I don't have a great sense of the
11 sense which is created by the summary. The
12 values for the 30th of September were not
13 items that I particularly focused on because
14 from the point of the view of the process of
15 valuing being -- the point of view of valuing
16 the portfolio, the important number was the
17 most up to date number.
18 If you're looking at previous
19 month ends, say the 31st of October or the
20 30th of November, as time was progressing,
21 then at that time it was -- the interesting
22 thing would be based on our assessment of what
23 assets we expect to receive, what they'd be
24 worth at that time, at the point in time we're
25 setting because we didn't know when we

Page 96

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 easiest one to look at is actually the one
3 which is numbered 844. That feeds through to
4 cell C-8. And then cell G-18 is a component
5 of cell C-12.
6 MR. SHAW: Just so we're clear,
7 when you said G-18 you were talking
8 about on 87B and when you were talking
9 about C-12 you were talking on the
10 second page of 377A?
11 THE WITNESS: That's correct.
12 Q. Okay. So the -- looking at 87B,
13 the cell you pointed me to was E-18.
14 A. Yes.
15 Q. That's the column dated 22
16 December 2008 BCG value, correct?
17 A. Yes.
18 Q. And the total number is 3.916
19 billion and change, right?
20 A. (Witness nods.)
21 Q. And when you go over to the
22 acquisition balance sheet which is
23 Exhibit 377A on the second page in column --
24 in cell C-8, the number of 3.92 is just a
25 rounded up 3.916, correct?

Page 95

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 received them so the 22nd of December wasn't a
3 date which had any significance for us earlier
4 than that. So we were constantly updating our
5 best estimate of the value we expected to
6 receive.
7 So there were values done of this
8 portfolio or our best estimate of this
9 portfolio on a number of dates preceding that
10 as time progressed. And this was the last one
11 because this was the one that corresponded
12 with the date that we received them.
13 Q. Just help me trace your -- trace
14 the connection between 87B and 377A. You
15 could use line items or page numbers.
16 A. Sure.
17 Q. I just want to see where the
18 numbers, if they do, from 87B track onto the
19 spreadsheet that's 377A.
20 A. The tracking is the cell E-18 from
21 37B.
22 Q. So that's 3.9 billion and change.
23 A. Yeah.
24 Q. All right.
25 A. That feeds through to -- the

Page 97

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. That is correct.
3 Q. There is in the acquisition
4 balance sheet a line item for valuation
5 adjustment which is a negative \$2.09 billion
6 number, correct?
7 A. Yes.
8 Q. And what you have also told me is
9 for the JPMorgan Chase assets there is an item
10 number which is G-18 which is \$176 million.
11 A. Yeah.
12 Q. That is also part of the 2.09
13 valuation adjustment.
14 A. That's correct.
15 Q. All right. Okay. So on your
16 acquisition balance sheet, the JPM inventory
17 which is line 8, that is being valued as of
18 December 12th, 2008, correct?
19 A. December 22nd.
20 Q. Sorry. December 22nd, 2008.
21 A. That's correct.
22 Q. You're right, yeah.
23 The line item which is 7 on your
24 acquisition balance sheet which states Initial
25 Inventory, that is being valued as of the 22nd

Page 98	Page 99
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 of September, 2008, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And those valuations and the other</p> <p>5 items on your acquisition balance sheet roll</p> <p>6 up to the negative goodwill item of</p> <p>7 4.7 billion, correct?</p> <p>8 A. Those items are part of the net</p> <p>9 assets which contribute towards the negative</p> <p>10 goodwill calculation, yes.</p> <p>11 Q. And if I go to the first page of</p> <p>12 Exhibit 337A, which is a form of the</p> <p>13 acquisition balance sheet, that was used for</p> <p>14 disclosure purposes, correct?</p> <p>15 A. Yeah.</p> <p>16 Q. On that first page of</p> <p>17 Exhibit 377A, the values for the assets are as</p> <p>18 of those different dates that we've talked</p> <p>19 about. Some of those assets are valued as of</p> <p>20 the 22nd of December and some of them are</p> <p>21 being valued as of the 22nd of September.</p> <p>22 A. That's correct.</p> <p>23 Q. All right. Other than those two</p> <p>24 dates, are there any other dates as of which</p> <p>25 assets were valued for purposes of your</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 acquisition balance sheet?</p> <p>3 A. No.</p> <p>4 Q. Let's take a look at 86B which --</p> <p>5 I'm sorry. Let's stay with 87B for a minute.</p> <p>6 A few other items here.</p> <p>7 Column E on 87B which is BCG</p> <p>8 value, what's that? The product control</p> <p>9 group?</p> <p>10 A. Yes. That's correct.</p> <p>11 Q. And what is that? An internal</p> <p>12 independent price valuation group of some</p> <p>13 type?</p> <p>14 A. Yes. That's the mid price value</p> <p>15 that resulted from the process of product</p> <p>16 control price testing front office values. So</p> <p>17 that was the end agreed Barclays value. The</p> <p>18 mid price.</p> <p>19 Q. And just to be clear, what that</p> <p>20 process was, the obtaining of the BCG value,</p> <p>21 could you describe how just mechanically the</p> <p>22 process that's followed within Barclays to</p> <p>23 come up with those BCG values. Go from the FO</p> <p>24 values, the front office values, to the BCG</p> <p>25 values.</p>
Page 100	Page 101
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah. So the front office will</p> <p>3 mark their assets -- the traders who trade the</p> <p>4 assets and are closest to it for that purpose,</p> <p>5 that's the same process that we followed on a</p> <p>6 business as usual basis for all assets, all</p> <p>7 trading assets which are held by Barclays</p> <p>8 Capital.</p> <p>9 Those valuations would then be</p> <p>10 considered by price testing group which</p> <p>11 resides within product control. They would</p> <p>12 test those prices by reference to observe for</p> <p>13 market data and indices and close proxies and</p> <p>14 broker quotes and other sources of independent</p> <p>15 information which will differ according to</p> <p>16 asset class and security type.</p> <p>17 The difference between those two</p> <p>18 values would be assessed and discussed and a</p> <p>19 consensus value will be included on the</p> <p>20 balance sheet.</p> <p>21 Q. The next column over, F, is MV</p> <p>22 with liquidity which is market value with</p> <p>23 liquidity; is that right?</p> <p>24 A. Yes. That's the market value</p> <p>25 stated at bid price. So under accounting</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 standards we're required to measure assets at</p> <p>3 bid so our best estimate of exit price. And</p> <p>4 that's what column F is. And that's the net</p> <p>5 number which feeds into the acquisition</p> <p>6 balance sheet and therefore the negative</p> <p>7 goodwill calculation and financial statement</p> <p>8 disclosures.</p> <p>9 Q. At the bottom section of this</p> <p>10 spreadsheet, 87B, is titled Entity Level</p> <p>11 Breakdown.</p> <p>12 Do you see that?</p> <p>13 A. Yeah.</p> <p>14 Q. Could you describe briefly what</p> <p>15 information is being shown in that section of</p> <p>16 the spreadsheet.</p> <p>17 A. Yeah. That's the allocation of</p> <p>18 the items between two legal entities.</p> <p>19 Q. Okay. What are those two legal</p> <p>20 entities?</p> <p>21 A. LMBR is BBPLC is part of a branch</p> <p>22 of that. And LIICT is a separate entity whose</p> <p>23 full name -- I can't recall its full name off</p> <p>24 the top of my head. It was another</p> <p>25 wholly-owned subsidiary of the Barclays group.</p>

Page 102	Page 103
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 I can't recall the full name.</p> <p>3 Q. Okay. If you look at 337A which</p> <p>4 is the acquisition balance sheet --</p> <p>5 A. Yeah.</p> <p>6 Q. -- and if you look at the second</p> <p>7 page, line 8 which is the JPM inventory, we</p> <p>8 earlier looked at cell C-8 which is the BCG</p> <p>9 value number, the 3.92, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And if you read across that line,</p> <p>12 that 3.92 number is allocated between BCI,</p> <p>13 right? .69 is allocated to BCI?</p> <p>14 A. I have misspoke. The LMBR relates</p> <p>15 to BCI not to BBPLC.</p> <p>16 Q. All right. And the remainder,</p> <p>17 3.23 billion, is allocated to column N as in</p> <p>18 Nancy, 3.23.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And that's a Cayman -- that's</p> <p>22 Cayco is what it's called?</p> <p>23 A. Yeah. That was a shorthand. That</p> <p>24 wasn't its full name. That's the main reason</p> <p>25 why I can't recall the full name of it because</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 I was used to referring to it in shorthand as</p> <p>3 Cayco.</p> <p>4 Q. What can you tell us about what</p> <p>5 Cayco is?</p> <p>6 A. It's a subsidiary of Barclays</p> <p>7 Group.</p> <p>8 Q. Is it a Cayman Islands company?</p> <p>9 A. It was certainly going to be set</p> <p>10 up in the Caymans which is why it was referred</p> <p>11 to as Cayco. My recollection is that's --</p> <p>12 yeah, my recollection is that is what happened</p> <p>13 here.</p> <p>14 Q. And just to be clear, the BCI</p> <p>15 where .69 of the 3.9 billion is allocated,</p> <p>16 that's the US broker/dealer, correct?</p> <p>17 A. That's correct, yes.</p> <p>18 Q. Let's turn to 86B.</p> <p>19 86B is Schedule A and Schedule B,</p> <p>20 correct?</p> <p>21 A. 86B is -- yeah, it's the inventory</p> <p>22 which was received -- it's the inventory which</p> <p>23 was received the weekend of the 21st and the</p> <p>24 days preceding that.</p> <p>25 Q. Does 86B include any inventory</p>
Page 104	Page 105
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 that you expected to receive but have yet not</p> <p>3 received?</p> <p>4 A. No. This spreadsheet is the</p> <p>5 valuation of the inventory we did receive.</p> <p>6 Q. And I apologize if I've asked you</p> <p>7 this before. Other than 86B and 87B, are you</p> <p>8 aware of any other inventory that you're</p> <p>9 expecting to receive that you haven't yet</p> <p>10 received?</p> <p>11 A. In addition to 86B and 87B?</p> <p>12 Q. Yes.</p> <p>13 A. Yes, I am.</p> <p>14 Q. Okay. And what is that other</p> <p>15 inventory?</p> <p>16 A. Items from the LBI clearance boxes</p> <p>17 which has not yet been transferred to</p> <p>18 Barclays.</p> <p>19 Q. And so those items have not been</p> <p>20 included in your calculations in 86B and 87B;</p> <p>21 is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And, therefore, they haven't --</p> <p>24 well, maybe not therefore. And they have not</p> <p>25 been included in your acquisition balance</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 sheet, Exhibit 377A?</p> <p>3 A. That's not correct.</p> <p>4 Q. Okay. So where on 87 -- on 377A</p> <p>5 have you provided for items that you expect to</p> <p>6 receive but, in fact, have not yet received?</p> <p>7 A. To the extent that they have been</p> <p>8 recognized they are included in cell C-11.</p> <p>9 Q. And that's an item of about 700</p> <p>10 million, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And it's titled Additional</p> <p>13 Unencumbered Assets?</p> <p>14 A. Yes.</p> <p>15 Q. And now setting those aside, what</p> <p>16 else is there in terms of collateral that you</p> <p>17 expect to receive, have not yet received, and</p> <p>18 haven't accounted for in your acquisition</p> <p>19 balance sheet?</p> <p>20 A. And haven't accounted for.</p> <p>21 Q. Have not accounted for.</p> <p>22 A. There are further unencumbered</p> <p>23 assets which we commonly refer to as list B-2</p> <p>24 and C which were not included in cell C-11 of</p> <p>25 the second page of 377A in terms of other</p>

Page 106

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 assets that have not been recognized.
3 There is also collateral raised
4 futures positions held in Lehman affiliates
5 which has not been recognized. There is --
6 actually, would it be possible to refer to
7 those notes? I'm sure there are two smaller
8 items -- there are four items which I -- I'm
9 aware there are four items. That's two of
10 them. There are two other items which I can't
11 immediately recall.
12 Q. And the notes that you're
13 referring to are the notes that were handed
14 over to us this morning.
15 A. Yes.
16 Q. Is it your handwritten notes?
17 A. Yes.
18 (Deposition Exhibit 399A,
19 handwritten notes, marked for
20 identification as of this date.)
21 A. Oh, yes. So the principal and
22 interest on --
23 Q. Hold on one second. Let's just
24 get --
25 A. Sure.

Page 108

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. That's it.
3 A. Yes.
4 Q. And your estimate of the value of
5 those four items is 765 million and then you
6 have a provision, correct?
7 A. The provision is against those
8 items. They're two separate items.
9 Q. Okay. So the valuation then -- or
10 your estimate of the valuation of those four
11 items is 765 million?
12 A. Yes.
13 Q. And, again, just to be clear,
14 those do not appear -- that item, 765 million,
15 is not included on your acquisition balance
16 sheet, Exhibit 377A, correct?
17 A. Correct.
18 Q. And it's not part of 86B and 87B.
19 A. That's correct.
20 Q. Okay.
21 All right. 86B. There are two
22 parts of the first page of Exhibit 86B that I
23 want to draw your attention to. There appears
24 to be a valuation and calculation as of the
25 22nd of September which goes from line 1

Page 107

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. I've handed you an exhibit which
3 has been marked as 399A. Are those the notes
4 that you were referring to?
5 A. They are.
6 Q. Okay. And if you could state for
7 the record what the other items are. The
8 other two items are.
9 A. The other two items are principal
10 and interest on the unencumbered assets which
11 are summarized in cell C-11 of Exhibit 377A.
12 And also -- and also collateral against
13 customer positions which held in the form of
14 letters of credit were not recognized for
15 accounting purposes.
16 Q. Just on your notes, where in your
17 notes are you? This is page 1 of your notes,
18 right?
19 A. Yes. It's the second -- it's the
20 second bullet. So I've just been through the
21 four subbullets of the second bullet.
22 Q. And the second bullet just to be
23 clear is titled Assets Not Received Not on
24 Balance Sheet, Not on BS.
25 A. Yes.

Page 109

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 through line 30; is that right?
3 (Document review.)
4 A. Yes.
5 Q. And then starting on line 32 down
6 to line 45, if I'm reading this correctly,
7 this appears to be a valuation or a
8 calculation as of 9 January, '09; is that
9 correct?
10 A. No. It's a valuation as at 22nd
11 of September but they're two slightly
12 differing versions. One is between rows 3 and
13 14 and the other is between 32 and 44. There
14 were a couple of individual adjustments which
15 needed to be made which are summarized in
16 those 27 to 30.
17 But the valuations are -- for
18 financial reporting purposes that net
19 difference which is 57 million from cell E-30
20 is not particularly material.
21 Q. And in connecting 86B and 377A,
22 which cells on 86B roll up into the second
23 page of 377A?
24 A. So the ones in row 14.
25 Q. And so those would be D-14 and

Page 110	Page 111
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 F-14? 3 A. That's correct. As I said, there 4 were some immaterial adjustments but if you 5 were to -- there were some immaterial 6 adjustments which were made at the last minute 7 but at a material level the cells D-14 and 8 F-14 are the ones which roll up in the 9 acquisition accounting in our financial 10 statements. 11 Q. The differential between the 12 values in the -- in column D, BCG value, and 13 the column E, Market Value 9/22, that's again 14 pricing at the bid. Is that the reason for 15 the differential? 16 A. Yes. It's the bid/offer 17 differential, yes. 18 Q. The differential between column C 19 and column D, do you know why there's a 20 differential there? 21 A. The column C values don't feed 22 into our financial reporting. They were 23 values which were ascribed to the securities 24 by the custodian whereas we are required to 25 value them by asset class according to</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 relevant accounting standards and in line with 3 valuation methodology used for other similar 4 assets already owned by the bank. So the 5 important numbers from our financial reporting 6 perspective are those between D and F rather 7 than what the custodian may have attributed to 8 them. 9 Q. You told us earlier that this 10 document, 86B, you confirmed that this was the 11 final version that rolled up into your 12 disclosure document, correct? 13 A. Yes. 14 Q. When was the first version of 86B 15 created? 16 A. The form of it changed and evolved 17 over time. So this is the final 18 representation of valuation process which was 19 ongoing from the time of the acquisition. The 20 spreadsheet in which that process was embodied 21 may have been simpler or different at various 22 stages through that time. But it was an 23 evolution. 24 Q. And if I understand the way this 25 spreadsheet works, 86B, there is in fact CUSIP</p>
Page 112	Page 113
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 level valuation data that rolls up into each 3 of these categories, line 3, line 4, line 5, 4 et cetera; is that correct? 5 A. That's correct. 6 Q. Now, some of the collateral that 7 was transferred over to Barclays on the 18th, 8 19th and that time period of September 2008, 9 some of that's been sold, correct, by 10 Barclays? 11 A. Some of it, yes. 12 Q. Okay. How, if at all, has the 13 value at which assets were sold been reflected 14 in this spreadsheet? 15 Let me just rephrase that. 16 Is the price obtained by Barclays 17 on the sale of assets that were acquired from 18 Lehman, is that reflected on this spreadsheet? 19 A. Not directly. What I would say is 20 that there are various levels of liquidity 21 embodied in the various underlying assets. So 22 you've got very liquid and frequently traded 23 positions whereby they could be valued in a 24 straightforward manner by reference to 25 observed for market data for the 22nd of</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 September. 3 And then there are less liquid 4 assets which trade very infrequently and for 5 which is there not much market data for those 6 assets. 7 In order to arrive at a 22nd of 8 September valuation you'll be looking at a 9 number of things, transactions in similar 10 assets, recent transactions in assets, et 11 cetera. And for those -- assets of those 12 types, the price at which assets were sold 13 shortly after may be a factor which would be 14 taken into account because it may be 15 additional evidence as to what the appropriate 16 mark was for the 22nd of September. 17 But if those prices are used, then 18 they are used only as evidence to try to 19 improve the estimate of value on the 22nd of 20 September. And, therefore, would be adjusted 21 for any changes in circumstances or market 22 conditions between the 22nd of September and 23 the dates of sale. 24 So the simplest answer is, no, 25 they're not reflected at all directly. But</p>

Page 114	Page 115
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 the more -- the more accurate answer is that</p> <p>3 for illiquid assets sales may factor into the</p> <p>4 valuations as one part of the consideration of</p> <p>5 the right price.</p> <p>6 Q. Okay. They may factor in and, in</p> <p>7 fact, were factored in for certain CUSIPs.</p> <p>8 A. I don't have a sense of to what</p> <p>9 extent those sales did feed in because that's</p> <p>10 getting down to a more CUSIP-by-CUSIP</p> <p>11 level consideration.</p> <p>12 In terms of the general process,</p> <p>13 for the more liquid securities to the extent</p> <p>14 they were sold, yes, they would have been</p> <p>15 taken into account. But to get an accurate</p> <p>16 sense of whether that occurred in any material</p> <p>17 sense it would be necessary to talk to the</p> <p>18 relevant asset class experts.</p> <p>19 Q. The liquidity value column, column</p> <p>20 F, BCG Liquidity Value, in effect the numbers</p> <p>21 that appear there are basically column D minus</p> <p>22 column E, correct?</p> <p>23 A. Yes. That's the bid/offer</p> <p>24 adjustment.</p> <p>25 Q. But if I understand your last --</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 your prior answers, that's not just the</p> <p>3 bid/offer adjustment, correct?</p> <p>4 A. No. That is just the bid/offer</p> <p>5 adjustment.</p> <p>6 Q. Okay. So any adjustments that are</p> <p>7 made on account of sales and price discovery</p> <p>8 through sales of assets, are they not</p> <p>9 reflected in column F?</p> <p>10 A. They would be reflected. Any</p> <p>11 adjustments to mid price that are required to</p> <p>12 get to bid are included in that column for</p> <p>13 whatever reason based on whatever evidence.</p> <p>14 Q. So you would reflect the bid/offer</p> <p>15 adjustment where you didn't transact but where</p> <p>16 you had a bid and offer you would price it at</p> <p>17 the bid, correct?</p> <p>18 A. All of the securities included</p> <p>19 there are priced at the bid.</p> <p>20 Q. And in those instances where you</p> <p>21 actually had a transaction in the weeks</p> <p>22 subsequent to acquiring the assets, and you</p> <p>23 sold the asset, you actually executed as a</p> <p>24 particular price, you would use that as the</p> <p>25 price or at least that would factor into your</p>
Page 116	Page 117
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 analysis of the appropriate price?</p> <p>3 A. It may do. Depending on other</p> <p>4 evidence which is available in order to get to</p> <p>5 the right bid price.</p> <p>6 Q. Do you have any understanding as</p> <p>7 to why the PCG values in column D were</p> <p>8 different from the BoNY values in column C?</p> <p>9 A. No.</p> <p>10 MR. TAMBE: We could break for</p> <p>11 lunch.</p> <p>12 MR. SHAW: Forty-five minutes?</p> <p>13 MR. TAMBE: Forty-five minutes.</p> <p>14 (Luncheon recess taken at 12:28</p> <p>15 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:22 p.m.)</p> <p>4 GARY ROMAIN, resumed and</p> <p>5 testified as follows:</p> <p>6 EXAMINATION BY (Cont'd.)</p> <p>7 MR. TAMBE:</p> <p>8 Q. I understand, Mr. Romain, you</p> <p>9 wanted to clarify or add to one of your</p> <p>10 answers before the lunch break?</p> <p>11 A. Oh, yes. That's correct. When we</p> <p>12 were talking about the securities which come</p> <p>13 across, I was asked about whether any which</p> <p>14 have not been received by Barclays were</p> <p>15 included on the acquisition balance sheet and</p> <p>16 I directed you towards the additional</p> <p>17 unencumbered assets on to which is cell C-11</p> <p>18 in the second page of Exhibit 377A.</p> <p>19 I want to clarify, that is not the</p> <p>20 only asset on the acquisition balance sheet</p> <p>21 which had not been received by Barclays.</p> <p>22 There's four types of which that is one. But</p> <p>23 the four -- they're actually -- they're</p> <p>24 summarized in the four bullets on the top of</p> <p>25 the first page of Exhibit 399A. So there's</p>

Page 118	Page 119
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 futures collateral held from brokers. There's</p> <p>3 the OCC collateral largely in the form of</p> <p>4 government securities. There's the</p> <p>5 unencumbered assets item. And there's also</p> <p>6 the amount of \$769 million receivable from</p> <p>7 15(c)(3) or equivalent tax. So to be</p> <p>8 complete, that's the sum of the assets</p> <p>9 included on the acquisition balance sheet</p> <p>10 which are not in physical possession of</p> <p>11 Barclays.</p> <p>12 Q. Okay. And other than C-11, where</p> <p>13 else would you find on this acquisition</p> <p>14 balance sheet, which is the second page of</p> <p>15 377A, those items?</p> <p>16 A. So the first item, the futures</p> <p>17 collateral is included in item C-17.</p> <p>18 Q. Futures customer balances.</p> <p>19 A. That's right.</p> <p>20 The second item, OCC collateral,</p> <p>21 is included in item C-18. The unencumbered</p> <p>22 assets we talked about as being item C-11.</p> <p>23 And the 15(c)(3) or equivalent is item C-15.</p> <p>24 Q. In your handwritten notes,</p> <p>25 Exhibit 399A, you have a bracket and the words</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 app 3 billion.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So approximately \$3 billion of</p> <p>6 asset value on the acquisition balance sheet</p> <p>7 is attributable to these four categories of</p> <p>8 assets not received.</p> <p>9 A. That's correct.</p> <p>10 Q. All right. And if you look at the</p> <p>11 line items on 377A, C-11 is -- is the entirety</p> <p>12 of that cell comprised of assets not yet</p> <p>13 received?</p> <p>14 A. Yes.</p> <p>15 Q. How about the 15(c)(3) assets?</p> <p>16 A. Yes.</p> <p>17 Q. So none of that has been received</p> <p>18 by Barclays as yet.</p> <p>19 A. That's correct.</p> <p>20 Q. The futures customer balances?</p> <p>21 A. That's a mixture. Some of that</p> <p>22 has been received and some of that has not.</p> <p>23 Q. Okay. And then the OCC customers</p> <p>24 on clearing margin?</p> <p>25 A. That item's actually easier to see</p>
Page 120	Page 121
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 on the following page where it's shown gross</p> <p>3 because that item is the net of the collateral</p> <p>4 balances and the fair value of the derivative</p> <p>5 positions.</p> <p>6 The collateral balance is item</p> <p>7 F-16 and item F-26. There's no distinction</p> <p>8 between those two lines items other than</p> <p>9 historically I had one number and then I added</p> <p>10 another number until I realized quite shortly</p> <p>11 into the process that I was actually looking</p> <p>12 at a single number.</p> <p>13 So the total of 2.29 is partly</p> <p>14 received and partly not received.</p> <p>15 Q. Okay. Just so I follow through</p> <p>16 then on that, on the acquisition balance sheet</p> <p>17 on page 2 of Exhibit 377 for OCC customer and</p> <p>18 clearing margin you have an amount of .98.</p> <p>19 A. Yes. .98 directly feeds through</p> <p>20 from cell F-26.</p> <p>21 Q. On the next page.</p> <p>22 A. Yes.</p> <p>23 Q. Page 845?</p> <p>24 A. Whereas the item, 0.21 is the net</p> <p>25 of item F-16 and item F -- E-42. Sorry.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And where does that show up on the</p> <p>3 acquisition balance sheet? Is that C-14?</p> <p>4 A. The net of F-16 and E-42 on the</p> <p>5 third page shows up in item C-14.</p> <p>6 Q. Exchange traded options.</p> <p>7 A. Yes.</p> <p>8 Q. And C-14, that's an amount</p> <p>9 actually received by Barclays.</p> <p>10 A. The -- C-14 is the net of two</p> <p>11 items from the point of view of the gross</p> <p>12 balance sheet. It's split up principally into</p> <p>13 a valuation because qualitatively it's a</p> <p>14 different process to value the open exchange</p> <p>15 derivative positions as opposed to valuing the</p> <p>16 cash and securities which represent the margin</p> <p>17 against those positions.</p> <p>18 So the item really to look at --</p> <p>19 or the items to look at are F-16 and F-26.</p> <p>20 The total of that is the total of the customer</p> <p>21 margin against OCC positions and some of that</p> <p>22 total, 2.29, has been received and some has</p> <p>23 not.</p> <p>24 Q. And how much has not been</p> <p>25 received?</p>

Page 122	Page 123
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. It's approximately a billion</p> <p>3 dollars.</p> <p>4 (Deposition Exhibit 400A, document</p> <p>5 bearing production numbers</p> <p>6 BCI-EX-(S)-00024451 through</p> <p>7 BCI-EX-(S)-00024455, marked for</p> <p>8 identification as of this date.)</p> <p>9 BY MR. TAMBE:</p> <p>10 Q. Mr. Romain, we're back to a</p> <p>11 non-30(b)(6) topic. I've placed before you</p> <p>12 Exhibit 400A. Take a moment to review and it</p> <p>13 let me know when you're done.</p> <p>14 (Document review.)</p> <p>15 A. Okay.</p> <p>16 Q. And you'll see there's a cover</p> <p>17 e-mail from Patrick Clackson to you.</p> <p>18 A. Um-hum.</p> <p>19 Q. Which is forwarding the attachment</p> <p>20 to this document, Exhibit 400A.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And is the attachment a document</p> <p>24 you're familiar with?</p> <p>25 A. It's a document I remember seeing,</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 yes.</p> <p>3 Q. And the last page of this exhibit</p> <p>4 which is titled Appendix B, Preliminary</p> <p>5 Balance Sheet, is that a document that you</p> <p>6 prepared?</p> <p>7 A. I can't tell if there's been any</p> <p>8 amendment to it but it is essentially a</p> <p>9 document I prepared, yes.</p> <p>10 Q. And this is an e-mail dated</p> <p>11 September 22nd, 2008. Both the e-mails on the</p> <p>12 first page are as of that date.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. The 22nd was the Monday following</p> <p>16 the Lehman bankruptcy filing. On that day</p> <p>17 what was your source of information for the</p> <p>18 items that appear on this last page of</p> <p>19 Exhibit 400A?</p> <p>20 A. I don't recall the source at that</p> <p>21 time. This was another version of the</p> <p>22 iterative balance sheet that was developing</p> <p>23 over the period. The iteration at any given</p> <p>24 date was based on the best information I had</p> <p>25 available at the time.</p>
Page 124	Page 125
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Does the valuation adjustment line</p> <p>3 if you see up in the asset allocation -- do</p> <p>4 you see it?</p> <p>5 A. Yes.</p> <p>6 Q. That's a negative \$2.83 billion</p> <p>7 number?</p> <p>8 A. Yes.</p> <p>9 Q. On the 22nd of September your BCG</p> <p>10 group had not gone through and done any kind</p> <p>11 of valuation adjustment, correct?</p> <p>12 A. I can't recall if it's accurate to</p> <p>13 say they had done nothing. It's fair to say</p> <p>14 that the detailed valuation work that was</p> <p>15 required to get to the end valuations had not</p> <p>16 yet occurred.</p> <p>17 Q. Do you have any understanding as</p> <p>18 to how that adjustment number of 2.83 billion</p> <p>19 was arrived at on Monday the 22nd of</p> <p>20 September?</p> <p>21 A. No.</p> <p>22 Q. I understand from other e-mails</p> <p>23 that Stephen King may have been the source of</p> <p>24 that number. Is that your understanding?</p> <p>25 A. I don't recall if that number was</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 sourced from Stephen or otherwise.</p> <p>3 Q. You know Stephen, correct?</p> <p>4 A. I do, yes.</p> <p>5 Q. And what role did he play at</p> <p>6 Barclays at this point in September of '08?</p> <p>7 A. So he was a senior trader within</p> <p>8 the PMCG group and was one of the people in</p> <p>9 the front office that was most involved with</p> <p>10 the -- with the acquisition from a business</p> <p>11 perspective and he was one of my main contacts</p> <p>12 from a business perspective during the entire</p> <p>13 process.</p> <p>14 Q. And did you have any discussions</p> <p>15 with Stephen as early as the 22nd about</p> <p>16 valuation adjustments to the inventory that</p> <p>17 had come over?</p> <p>18 A. I don't recall precise dates of</p> <p>19 conversations I had with him. I was certainly</p> <p>20 having conversations with him throughout the</p> <p>21 process to work on ensuring that the</p> <p>22 acquisition balance sheet I would be treating</p> <p>23 it at any time was as accurate as I could make</p> <p>24 it.</p> <p>25 Q. We could probably move to the side</p>

Page 126

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 for now 87B, your handwritten notes, and the
3 other stuff. But keep 400A, the document we
4 were just looking at handy. And especially
5 the last page of 400A.
6 (Pause on the record.)
7 (Deposition Exhibit 401A, document
8 bearing production numbers
9 BCI-EX-(S)-00052667 through
10 BCI-EX-(S)-00052668 with attachment,
11 marked for identification as of this
12 date.)
13 BY MR. TAMBE:
14 Q. I've handed you a three-page
15 document marked Exhibit 401A. Take a moment
16 to look at it and let me know when you are
17 done.
18 (Document review.)
19 A. Okay.
20 Q. And this is an e-mail from you to
21 Rich Ricci and others. Do you see that?
22 A. Yes.
23 Q. And you're attaching another
24 iteration of the acquisition balance sheet,
25 correct?

Page 128

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Exhibit 401A, you have a line item now for
3 Friday P&L approximately.
4 Do you see that?
5 A. Yes.
6 Q. And so that's reflecting a Friday
7 profit and loss number?
8 A. That's what Friday P&L stands for,
9 yes.
10 Q. And that's a number of about
11 \$200 million.
12 A. Yes.
13 Q. What is your understanding of what
14 that entry referred to?
15 A. I don't recall putting together
16 this precise version. The item is included as
17 part of the calculation of fair value based on
18 best information at the time. But in terms of
19 how precisely it fit into that calculation I
20 don't have a clear recollection.
21 Q. The valuation adjustment number
22 is the same as before, the 2.83 billion
23 negative.
24 Do you see that?
25 A. Yes.

Page 127

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. Yes.
3 Q. And you state in your e-mail "The
4 \$2.83 valuation adjustment is S. King's first
5 cut only."
6 Do you see that?
7 A. Yes.
8 Q. If you could turn to the balance
9 sheet which is the last page of Exhibit 401A.
10 A. (Witness complies.)
11 Q. And if we compare it to the
12 balance sheet we were looking at which is
13 400A, both of these are -- the cover e-mails
14 are 22nd September 2008. It looks like
15 Exhibit 401 is a little bit later in the day
16 than Exhibit 400. You could confirm that for
17 yourself.
18 A. Yeah. They're both on the same
19 date and, yes, they're the e-mails from
20 slightly different times during the day, yes.
21 Q. Right. And 401 is after 400,
22 correct?
23 A. Yes.
24 Q. There's a couple of changes that I
25 want to bring to your attention. One is on

Page 129

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. And there's a note associated with
3 that adjustment, note 5.
4 A. Yes.
5 Q. And in Exhibit 401A note 5 states
6 Trades are initially booked at BoNY prices.
7 2.83 billion is initial estimate of the
8 adjustment Barclays' marks.
9 Do you see that?
10 A. Yes.
11 Q. And, again, do you know what
12 process was followed in coming up with this
13 \$2.83 billion number on the 22nd?
14 A. That would have been -- or was an
15 early estimate of the adjustment that would be
16 required to get the inventory to the 42.55
17 number which would have been the best
18 estimates of the prior bid price at that time.
19 As talked about, these numbers were moving
20 frequently during this period as additional
21 information was acquired.
22 But that's what the 2.83 -- that's
23 the purpose of the 2.83 was fulfilling in that
24 calculation there at that time.
25 Q. Okay. And I could see

<p style="text-align: right;">Page 130</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 mathematically how the 2.83 sort of gets</p> <p>3 subtracted from the 45.18 but what's the</p> <p>4 process that yields the 2.83? Is it CUSIP by</p> <p>5 CUSIP? Is it by asset category? Is it an</p> <p>6 estimate of the entire portfolio? How is that</p> <p>7 done? Back at that point in time.</p> <p>8 A. Back at that point in time I don't</p> <p>9 have clear understanding of the process that</p> <p>10 Stephen went through to get that initial cut.</p> <p>11 It was understood at that time that we were</p> <p>12 working on provisional numbers and a</p> <p>13 provisional understanding of the assets. And</p> <p>14 that a great deal of work involving Stephen</p> <p>15 King and front office but also finance price</p> <p>16 testing and discussion with PwC, our auditors,</p> <p>17 would be required before we got to a number</p> <p>18 which was sufficiently verified to be included</p> <p>19 in our financial statements.</p> <p>20 Q. I understand, Mr. Romain, that you</p> <p>21 probably went through a lot of additional</p> <p>22 steps before you put anything in your reported</p> <p>23 financial statement. I really am focusing on</p> <p>24 that date, the 22nd of September, the</p> <p>25 transaction has closed that morning. I just</p>	<p style="text-align: right;">Page 131</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 want to know if you know what process was</p> <p>3 followed in arriving at that estimate that</p> <p>4 morning.</p> <p>5 A. I don't know, no.</p> <p>6 Q. If you'd look down in</p> <p>7 Exhibit 4012A, below the net asset calculation</p> <p>8 there are line items -- I'm sorry -- below the</p> <p>9 total asset calculation, there are line items</p> <p>10 for repo liability, cure, retention, bonus.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And if you compare the entries for</p> <p>14 cure and bonus accrual on Exhibit 401A to</p> <p>15 those same items on 400A you'll see different</p> <p>16 entries, right?</p> <p>17 A. Yes, yes.</p> <p>18 Q. So the cure payment which was</p> <p>19 reflected at 2.25 in Exhibit 400A in</p> <p>20 Exhibit 401A is .8 billion.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know a reason for why</p> <p>24 that number changed on the 22nd of September?</p> <p>25 A. Well, at that time when I was</p>
<p style="text-align: right;">Page 132</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 putting together the acquisition balance</p> <p>3 sheets, I didn't have an understanding as to</p> <p>4 what cure payment was or what the nature of</p> <p>5 our obligation was. So there were initial</p> <p>6 placeholder numbers included for that as well</p> <p>7 as a number of other items. The source of</p> <p>8 those numbers I don't recall precisely now but</p> <p>9 I do recall that they were moving quickly as I</p> <p>10 had discussions with people who had an</p> <p>11 understanding of the terms of the</p> <p>12 acquisition -- the terms of the acquisition in</p> <p>13 that regard and better understood the</p> <p>14 appropriate item -- the appropriate quantum to</p> <p>15 be included.</p> <p>16 The cure in particular had two</p> <p>17 sources of uncertainty which persisted for</p> <p>18 some time. The first was uncertainty as to</p> <p>19 amount which was an exercise by which we</p> <p>20 needed to identify which contracts we'd be</p> <p>21 accepting and therefore which cure payments</p> <p>22 would be paid.</p> <p>23 And the second was a question of</p> <p>24 accounting treatment under appropriate</p> <p>25 accounting standards because in acquisition</p>	<p style="text-align: right;">Page 133</p> <p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 accounting you're required to include only</p> <p>3 obligations that you take on. And there is a</p> <p>4 way of viewing the cure payments which</p> <p>5 would -- and which would imply that we should</p> <p>6 not recognize any cure payments as an accrual</p> <p>7 in the acquisition balance sheet because we</p> <p>8 had no obligation to accept any contracts.</p> <p>9 That was an issue which was</p> <p>10 discussed for some time with PwC. That</p> <p>11 discussion was running parallel with the</p> <p>12 separate consideration of how much cure we</p> <p>13 thought we'd end up paying. The end</p> <p>14 resolution of that was that we felt that the</p> <p>15 appropriate interpretation of accounting</p> <p>16 standards would require us to include our best</p> <p>17 estimate for cure payments in the acquisition</p> <p>18 balance sheet and that's what we ended up</p> <p>19 doing.</p> <p>20 Q. And by the time you end up</p> <p>21 disclosing your financial statements for the</p> <p>22 acquisition, did you ultimately use the</p> <p>23 financial number that was actually paid out by</p> <p>24 Barclays for cure?</p> <p>25 A. By the time we -- by the time we</p>

Page 134	Page 135
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 published our financial statements the process 3 was not quite complete but very substantially 4 complete. So the amount we included as an 5 accrual was \$224 million. My recollection is 6 that by the time we reached financial 7 statements we paid very close to that amount 8 and there was a small amount which we were 9 intending still to pay. And when I revisited 10 it in the middle of this year the difference 11 between what we paid and what we recognized in 12 our financial statements was very small. A 13 quantum of less than a million dollars as I 14 recall. 15 Q. Okay. And as you compared 400A 16 and 401A, the net asset number in 401A is 17 \$4.52 billion, correct? 18 A. Yes. 19 Q. And that's up from 3.67 billion in 20 Exhibit 400A. 21 A. Yes. 22 Q. I've handed you, sir, a document 23 previously marked as Exhibit 361A. Take a 24 moment to review it and let me know when 25 you're done.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 (Document review.) 3 MR. WOOD: Can I just note on the 4 record that I think this same document 5 has also been marked as Exhibit 384 in 6 another deposition. 7 (Document review continuing.) 8 A. Okay. 9 Q. And sir, do you recognize this as 10 a forward of your e-mail that we were just 11 looking at, Exhibit 401A, by Mr. Clackson to 12 Rich Ricci and so on? 13 Do you see that? 14 A. Yes. 15 Q. And you can confirm this for me 16 but it appears to me that the attachment to 17 Exhibit 361A, the acquisition summary, 18 although the printout is a little different I 19 believe it's the same spreadsheet as 401A but 20 correct me if I'm wrong. 21 A. Yes. Yes, it is. 22 Q. Now, if you focus on Mr. 23 Clackson's e-mail to Rich Ricci forwarding 24 this draft balance sheet, he states, "So some 25 things we have to keep working on to squeeze</p>
Page 136	Page 137
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 out what we can, but looks more like 3 to 3.5 3 rather than 4 plus." 4 Do you see that? 5 A. Yes. 6 Q. What's he referring to with the 3 7 to 3.5 rather than the 4 plus? 8 MR. SHAW: Objection, foundation. 9 A. I don't know. 10 Q. Was it your understanding that 11 there was a target negative goodwill number 12 that you were looking to achieve? 13 A. No. 14 Q. That wasn't your understanding. 15 A. No, that wasn't my understanding. 16 Q. Did you have an understanding as 17 to any target goodwill number? 18 A. No. 19 Q. Rich Ricci responds to Patrick 20 Clackson by saying, "What have we told Group?" 21 Do you see that? 22 A. Yes. 23 Q. Do you understand what the 24 reference to "group" there is? 25 A. I don't -- I don't know what he</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 means. Typically when we refer to group we 3 mean Barclays Group. 4 Q. Putting this exhibit aside, at 5 this time period, early the week of the 22nd, 6 were you party to any discussions about trying 7 to achieve a negative goodwill number that 8 coincided with the negative goodwill number 9 that had been set out in the Barclays board 10 presentations the prior week? 11 A. No. 12 Q. Was there any concern about not 13 achieving the negative goodwill number that 14 had been disclosed to the board? 15 MR. SHAW: Objection, foundation. 16 A. Not that I was aware of. 17 Q. Sir, I've handed you what's been 18 previously marked as Exhibit 385. If you 19 could take a moment to review that e-mail 20 chain and let me know when you're done. 21 (Document review.) 22 A. Okay. 23 Q. You'll see this e-mail chain 24 begins again on page 2 with the cover e-mail 25 to Exhibit 401A which is your e-mail to the</p>

Page 138	Page 139
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 group. 3 Do you see that? 4 A. Yes. 5 Q. And I want to draw your attention 6 to the first page of Exhibit 385 which is the 7 third e-mail down which is from Rich Ricci to 8 Patrick Clackson. 9 Do you see that? 10 A. Yes. 11 Q. It says, "Need to get to 4 or no 12 write-down capacity." 13 Write-down is misspelled but it 14 says write-down capacity. 15 Do you see that? 16 A. Yes. 17 Q. Do you know what that was a 18 reference to? 19 A. No, I don't. 20 (Deposition Exhibit 402A, document 21 bearing production number 22 BCI-EX-(S)-00052678, marked for 23 identification as of this date.) 24 BY MR. TAMBE: 25 Q. Sir, I've handed you a one-page</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 document marked Exhibit 402A. Take a moment 3 to review it and let me know when you're done. 4 (Document review.) 5 A. Okay. 6 Q. And you'll see the bottom e-mail 7 on this page, Exhibit 402A, is an e-mail from 8 you to Jasen Yang copied to others. 9 Do you see that? 10 A. Yes. 11 Q. Okay. Who is Jasen? 12 A. Jasen is another trader in the 13 PMGT group. I believe he reports to Stephen 14 King. 15 Q. You state in your second 16 paragraph, "What we're ultimately trying to 17 get to is a valuation for the total portfolio 18 (including the 1.9 billion from the box) for 19 inclusion in the acquisition balance sheet - 20 Friday close so not including any 21 Monday/Tuesday gain/losses which should remain 22 in trading P&L." 23 Do you see that? 24 A. Yeah. 25 Q. Were you stating in that sentence</p>
Page 140	Page 141
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 that you were trying to value the total 3 portfolio as of Friday close of business 4 prices? 5 A. Yeah. That point in time -- 6 that's the direction I'm giving to Jasen at 7 that point in time, yes. 8 Q. I understand from your testimony 9 this morning that for the collateral that was 10 transferred over, the Thursday, Friday, the 11 weekend, the valuation date that was picked 12 was September 22nd, the Monday, right? 13 A. That's true. 14 Q. Why the change? Why was that the 15 ultimate decision? 16 A. At that point in time the deal had 17 only just been done and my understanding of 18 what happened when and other terms and what 19 had been received when was incomplete and 20 evolving. And over time discussions of 21 various aspects occurred and one of which was 22 the appropriate valuation date and the 23 appropriate valuation date was determined to 24 be the 22nd of September. 25 Q. In Exhibit 401A you have a line</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 item there for Friday P&L. 3 Do you see that? 4 A. Yes. 5 Q. Can you tell from that version of 6 the acquisition summary balance sheet as of 7 what date you were valuing the inventory? 8 A. I can't, no. And to be clear I 9 wasn't valuing the inventory. 10 Q. Or Barclays was valuing the 11 inventory. 12 A. Yeah. 13 Q. Because the line right above the 14 Friday P&L line in Exhibit 401A reads 15 Inventory Thursday Close. 16 Do you see that? 17 A. Yes. 18 Q. And Thursday is when the Fed repo 19 assets were transferred over to Barclays, 20 correct? 21 A. I don't have full information of 22 exactly what was transferred precisely when. 23 Q. Do you know who would have 24 provided you with the Friday P&L number that 25 appears in Exhibit 401A?</p>

Page 142

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. No.
3 Q. When the valuation was done as of
4 Monday the 22nd of September were the prices
5 used close of business prices on Monday the
6 22nd?
7 A. I'm not sure. I'm not the
8 valuation expert. I'm not sure what the
9 CUSIP-by-CUSIP approach that was taken was.
10 And, you know, what market convention is for
11 valuing the various security types which were
12 involved.
13 Q. Okay. Who would know the answer
14 to that?
15 A. It would be the price testing group
16 within product control.
17 Q. And just so I understand, just
18 using 401A as the example, if the decision was
19 made -- and the decision was made -- to price
20 the inventory as of Monday, September 22nd,
21 having done that, would you take into account
22 in valuing the assets any P&L on Friday?
23 A. I'm not sure I quite understand
24 the question. Sorry. Take into account in
25 what way?

Page 144

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 BCI-EX-(S)-00024689 through
3 BCI-EX-(S)-00024690 with attachment,
4 marked for identification as of this
5 date.)
6 BY MR. TAMBE:
7 Q. Sir, I've handed you a three-page
8 document marked Exhibit 403A. A cover e-mail,
9 a placeholder page, and then a spreadsheet.
10 Let me know when you're done reviewing it.
11 (Document review.)
12 A. Okay.
13 Q. And the last page of Exhibit 403A,
14 if you can confirm that that's another version
15 of the acquisition balance sheet, correct?
16 A. It is, yes.
17 Q. And it's a cover e-mail from you
18 to Patrick Clackson and that's dated September
19 24th, correct?
20 A. Yes.
21 Q. Now, if you compare Exhibit 403A,
22 the acquisition balance sheet in Exhibit 403A,
23 with Exhibit 401A, you'll see that the net
24 asset number has \$6.01 billion.
25 Do you see that?

Page 143

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. As you do in Exhibit 401A.
3 In Exhibit 401A, if I understand
4 what's going on there, there's a valuation --
5 at least it appears to be, inventory Thursday
6 close. And then the gain that is earned by
7 Barclays during the day on Friday is reflected
8 as additive to the asset value.
9 Do you see that?
10 A. Yes.
11 Q. If the decision was made that you
12 weren't going to value the inventory as of
13 Thursday, you were going to value the
14 inventory as of Monday, would that eliminate
15 the need to record a P&L gain for Friday?
16 A. You'd be valuing it by reference
17 to the Monday price. So that would be the sum
18 of what you'd need to do.
19 Q. But this P&L gain that's reflected
20 on Exhibit 401A, that would be categorized as
21 the trading P&L, correct?
22 A. I don't know what that item
23 particularly was.
24 (Deposition Exhibit 403A, document
25 bearing production numbers

Page 145

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. Yes.
3 Q. And at least one of the drivers of
4 that change is the valuation adjustment
5 number. And you'll see it's down from 2.83 to
6 1.38.
7 A. Sorry. You changed my reference
8 to which version?
9 Q. Sure. The two documents you
10 should be looking at are Exhibit 401A and
11 403A.
12 A. Yes. One of the differences is
13 that.
14 Q. Okay. Now, that's roughly a
15 \$1.5 billion difference, correct? In the
16 valuation adjustment.
17 A. Well, it's -- in terms of the
18 adjustment that's made to the 45.18 to get to
19 a net number the difference is slightly less.
20 Q. Right.
21 A. Because there's no 0.2.
22 Q. The P&L, the Friday P&L number is
23 no longer --
24 A. Yes.
25 Q. But looking at just the valuation

Page 146	Page 147
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 adjustment line you've gone from a 2.83</p> <p>3 negative to a 1.38 negative adjustment,</p> <p>4 correct?</p> <p>5 A. My concern there is whether we're</p> <p>6 comparing like with like. I don't know enough</p> <p>7 about the 0.2 to know whether that was rolled</p> <p>8 into the 1.38 or not.</p> <p>9 Q. And do you have any understanding</p> <p>10 as to the reason for the change from 2.83 to</p> <p>11 the 1.38 putting aside the 0.2?</p> <p>12 A. No.</p> <p>13 Q. Both in 401A and 403A on -- for</p> <p>14 the inventory pricing there's a note that</p> <p>15 reads, "Trades are initially booked at BoNY</p> <p>16 prices."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know what the convention is</p> <p>20 in pricing securities that are used for repo</p> <p>21 trading?</p> <p>22 A. I don't know.</p> <p>23 Q. And do you know whether the Bank</p> <p>24 of New York was Barclays' agent for that repo</p> <p>25 transaction?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm not sure of the precise</p> <p>3 relationships in that regard, no.</p> <p>4 MR. TAMBE: Let's take a short</p> <p>5 break.</p> <p>6 (Recess taken.)</p> <p>7 BY MR. TAMBE:</p> <p>8 Q. Mr. Romain, we talked this morning</p> <p>9 about some of the assets acquired by Barclays</p> <p>10 having been sold.</p> <p>11 Do you remember that?</p> <p>12 A. Once the assets were acquired a</p> <p>13 number of things happened to them. Some would</p> <p>14 have been sold relatively shortly. Some were</p> <p>15 transferred into ongoing trading books to be</p> <p>16 managed by the relevant traders. Once that</p> <p>17 happens they're commingled with assets which</p> <p>18 were acquired in other ways so there would</p> <p>19 have been some which had been elected and</p> <p>20 there would have been some which were held for</p> <p>21 a long period.</p> <p>22 Q. We had a brief discussion about</p> <p>23 whether prices at which the assets were sold</p> <p>24 factored into the valuation analysis in some</p> <p>25 way.</p>
Page 148	Page 149
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Do you recall that discussion?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. Would transfers of assets</p> <p>5 within the Barclays Group be treated as sales</p> <p>6 and factored into that calculation?</p> <p>7 A. In terms of the measurement</p> <p>8 objective being an external fair value, those</p> <p>9 prices would not factor -- those prices in and</p> <p>10 of themselves would not factor into the</p> <p>11 valuations.</p> <p>12 However, the price at which</p> <p>13 something is transferred into may well be a</p> <p>14 representation of what our best estimate of</p> <p>15 the market price is at that time in which case</p> <p>16 they may well be the same number.</p> <p>17 But in terms of the considerations</p> <p>18 which feed into the price that assets were</p> <p>19 transferred internally within Barclays I don't</p> <p>20 have a great deal of insight into how that</p> <p>21 works in practice.</p> <p>22 Q. And just so I understand your</p> <p>23 answer, at least for some of the assets</p> <p>24 acquired from Lehman there were transfers of</p> <p>25 those assets within Barclays, correct?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And there were values ascribed to</p> <p>4 those assets when those assets were</p> <p>5 transferred internally, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And on some occasions you have</p> <p>8 taken into account the values at which those</p> <p>9 internal transfers were done for purposes of</p> <p>10 valuing those assets for the acquisition</p> <p>11 balance sheet; is that correct?</p> <p>12 A. No.</p> <p>13 Q. Okay. Is it the case that</p> <p>14 internal transfers and internal transfer</p> <p>15 values were disregarded in doing your</p> <p>16 acquisition balance sheet valuation?</p> <p>17 A. I was not directly involved in the</p> <p>18 valuation. I did not factor into the</p> <p>19 acquisition balance sheet transfers. What I</p> <p>20 factored into the acquisition balance sheets</p> <p>21 was Barclays' best estimate of the bid price</p> <p>22 for those securities which was determined in</p> <p>23 accordance with Barclays' ongoing valuation</p> <p>24 policies and applicable accounting standards.</p> <p>25 Q. Okay. And when you took into</p>

Page 150	Page 151
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 account Barclays' best estimate would</p> <p>3 Barclays' best estimate include bids provided</p> <p>4 by Barclays' own internal traders?</p> <p>5 A. The process for valuation is</p> <p>6 dependent on the asset type. And for less</p> <p>7 liquid assets it's more judgmental than it is</p> <p>8 for more liquid assets. However, the maximum</p> <p>9 possible use is always made of external data.</p> <p>10 So the views of traders as to the appropriate</p> <p>11 valuation of an asset being their best</p> <p>12 estimate of an external bid price for that</p> <p>13 asset is a part of the valuation process which</p> <p>14 is supplemented by external market data and</p> <p>15 price testing -- and price testing procedures.</p> <p>16 The precise balance between those depends on</p> <p>17 the asset but external market data to the</p> <p>18 extent it is available is typically the best</p> <p>19 evidence of the appropriate fair value. So</p> <p>20 that's the concept. When you get down to</p> <p>21 individual security level, that's where my</p> <p>22 sort of level of knowledge ends.</p> <p>23 Q. The spreadsheets that roll up into</p> <p>24 the summary sheets -- we looked at 87B and 86B</p> <p>25 which were the summary level sheets that then</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 rolled up into the acquisition balance sheet.</p> <p>3 Do you remember that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. The CUSIP level</p> <p>6 spreadsheets, do those indicate what</p> <p>7 particular methodology or process was used on</p> <p>8 a CUSIP-by-CUSIP basis for determining the</p> <p>9 value?</p> <p>10 A. Not to my recollection. That's</p> <p>11 the result of the process. But for the less</p> <p>12 liquid and more complex instruments, the</p> <p>13 methodology is not something which were</p> <p>14 typically captured in the Excel spreadsheets.</p> <p>15 There are extensive valuation procedures and</p> <p>16 policies within the bank which are used as a</p> <p>17 reference point for how to value these assets.</p> <p>18 And the approach, the value of these assets</p> <p>19 was in mind in those policies both internally</p> <p>20 and in the opinion of the our outside</p> <p>21 auditors.</p> <p>22 Q. In terms of orders of magnitude</p> <p>23 can you ascribe any percentage to the</p> <p>24 percentage of this portfolio, the percentage</p> <p>25 of the inventory that you believe is the fault</p>
Page 152	Page 153
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 of this less liquid more complex difficult to</p> <p>3 value type of security.</p> <p>4 A. There's no dividing line really.</p> <p>5 It's a spectrum.</p> <p>6 Q. I just want to make sure I have</p> <p>7 one point covered. It's my understanding that</p> <p>8 at least some of the assets acquired from</p> <p>9 Lehman were subject to internal sales within</p> <p>10 Barclays from one desk to another desk. Is</p> <p>11 that your understanding as well?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Were the prices at which</p> <p>14 those assets sold within Barclays ever counted</p> <p>15 by you as a sale price that was used in the</p> <p>16 valuation?</p> <p>17 A. No. I was -- I had no awareness</p> <p>18 of the price at which securities were sold.</p> <p>19 What I asked for and received was the fair</p> <p>20 values of the assets.</p> <p>21 Q. So a trader reporting a fair value</p> <p>22 of an asset to you may have factored in an</p> <p>23 internal sale price but you wouldn't know</p> <p>24 that.</p> <p>25 A. The trader wasn't reporting</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 valuations to me.</p> <p>3 Q. Who was?</p> <p>4 A. The numbers that fed into those</p> <p>5 were the numbers which had been through the</p> <p>6 process which we discussed earlier which</p> <p>7 involved input from traders, price testing</p> <p>8 within finance, and auditor review.</p> <p>9 So those are the numbers which I</p> <p>10 took, the numbers which had passed through</p> <p>11 those processes and were then viewed as the</p> <p>12 agreed appropriate fair value for the</p> <p>13 instruments.</p> <p>14 Q. Okay. And so the processes that</p> <p>15 yield the numbers that you then used, those</p> <p>16 processes could have included prices at which</p> <p>17 assets sold within Barclays; is that correct?</p> <p>18 MR. SHAW: Objection. That calls</p> <p>19 for spec --</p> <p>20 A. I wouldn't want to speculate on</p> <p>21 that. All I can say which is not a response</p> <p>22 to your question, but it's pertinent to it, is</p> <p>23 that the values which came out of that process</p> <p>24 were Barclays' view of the appropriate fair</p> <p>25 value for those instruments, irrespective of</p>

Page 154	Page 155
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 whether transfers had occurred in those</p> <p>3 instruments or not subsequent to the</p> <p>4 transaction date. That was the measurement</p> <p>5 objective and that's what -- and that is the</p> <p>6 basis on which those numbers were considered.</p> <p>7 Q. I'm not quarrelling with you, sir,</p> <p>8 as to whether Barclays Capital believed those</p> <p>9 to be the fair values. All I'm trying to</p> <p>10 understand is the mechanical point which is --</p> <p>11 and maybe you don't know the answer to this.</p> <p>12 In arriving at Barclays' best</p> <p>13 estimate of the fair values of those assets</p> <p>14 did the processes which you referred to take</p> <p>15 into account the prices at which assets were</p> <p>16 transferred within Barclays?</p> <p>17 A. They took into account the</p> <p>18 traders' view of the value of the securities</p> <p>19 based on their experience and available market</p> <p>20 data.</p> <p>21 Q. And do you know whether the</p> <p>22 traders' views about valuation included prices</p> <p>23 at which securities were transferred within</p> <p>24 Barclays?</p> <p>25 A. No, I don't know that.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. Thank you.</p> <p>3 MR. TAMBE: I pass the witness.</p> <p>4 * * *</p> <p>5 EXAMINATION BY</p> <p>6 MR. WOOD:</p> <p>7 Q. Good afternoon, Mr. Romain.</p> <p>8 Again, I'm John Wood. I'm from Hughes,</p> <p>9 Hubbard & Reed. I represent the SIPA trustee.</p> <p>10 And just to start off I'm going to</p> <p>11 ask you some questions in your capacity as a</p> <p>12 30(b)(6) witness regarding margin held secure</p> <p>13 exchange rate derivatives and just to speed</p> <p>14 things along why don't you go ahead and take a</p> <p>15 look at your handwritten notes, Exhibit 399A.</p> <p>16 A. (Witness complies.)</p> <p>17 Q. On the second page, sort of the</p> <p>18 middle of the page there, you've got an entry</p> <p>19 that's margin posted by LBI at OCC (23/9).</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is that margin posted by LBI at</p> <p>23 the OCC on September 23rd?</p> <p>24 A. It's from the 23rd of September</p> <p>25 statement. My understanding is that there's a</p>
Page 156	Page 157
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 day lag in the statement. So it's intended to</p> <p>3 represent the 22nd of September.</p> <p>4 Q. And it looks like you have three</p> <p>5 entries there, cash, governments, and LOC; is</p> <p>6 that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And LOC is letters of credit?</p> <p>9 A. That's correct.</p> <p>10 Q. What are letters of credit?</p> <p>11 A. Well, they're essentially</p> <p>12 facilities which are drawn down, the account</p> <p>13 party being third-party banks but they take</p> <p>14 various forms.</p> <p>15 Q. So in writing this are you</p> <p>16 counting that as an asset?</p> <p>17 A. We have not included that in our</p> <p>18 acquisition balance sheets at the current</p> <p>19 time. But we're not distinguishing between</p> <p>20 those three items in terms of the nature of</p> <p>21 our claim and entitlement. These are viewed</p> <p>22 as -- all the three are viewed as margin which</p> <p>23 is related to the positions that were taken</p> <p>24 on. But it's margin which is held in one of</p> <p>25 three forms.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now, when you say your claim and</p> <p>3 entitlement, does that mean a claim and</p> <p>4 entitlement from the estate?</p> <p>5 A. I'm not sure in terms of the -- in</p> <p>6 what way we make a claim at all or against</p> <p>7 who. It's my understanding that these items</p> <p>8 we are entitled to receive under the service</p> <p>9 of the acquisition.</p> <p>10 Q. And so why were they not included</p> <p>11 in the acquisition balance sheet?</p> <p>12 A. The letters of credit?</p> <p>13 Q. Yes.</p> <p>14 A. I'm not directly involved in the</p> <p>15 proceedings but I understand there are</p> <p>16 discussions with the counterparties to those</p> <p>17 letters of credit which we don't believe has a</p> <p>18 bearing on our entitlement from a legal</p> <p>19 perspective. But when preparing financial</p> <p>20 statements we tend to be conservative and</p> <p>21 prudent in the way we do so. So if there are</p> <p>22 ongoing conversations or just more potentially</p> <p>23 disputes we would bear that in mind whether or</p> <p>24 not to include them in that balance sheet.</p> <p>25 Q. Are the disputes you're referring</p>

Page 158

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 to there with counterparties?
3 A. I don't have a great deal of
4 detail around the nature of the disputes.
5 Q. And just so I understand, could
6 you take a look at Exhibit 377A which you
7 previously went through with Mr. Tambe.
8 A. Yes.
9 Q. And so that's page 3, Bates
10 numbers ending in 845.
11 A. Yeah.
12 Q. And I believe with Mr. Tambe you
13 added up lines 16 and 26.
14 A. Yes.
15 Q. To get to about 2.29 billion of
16 collateral.
17 A. That's right, yes.
18 Q. And so your numbers there, are
19 those intended to roughly correspond to the
20 cash -- actually, no. Let me rephrase that.
21 Are those supposed to correspond
22 to the liens that we're looking at on
23 Exhibit 399A?
24 MR. SHAW: Could you clarify when
25 you say your numbers there, what you're

Page 160

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Exhibit 377A -- that number would go up if you
3 added the letters of credit?
4 A. It would do, yes. I was referring
5 principally to the government securities. If
6 you would include that then the number would
7 be higher but that's not recognized in the
8 balance sheet which is why I excluded it in
9 that response.
10 Q. When you say you're referring to
11 government securities -- so the government
12 securities have not been delivered?
13 A. That's correct.
14 Q. But the cash has?
15 A. The cash has -- I think as of the
16 year end there may have been a small amount
17 which hadn't been delivered. But my
18 understanding is it has now been substantially
19 delivered.
20 Q. So just so I understand, by and
21 large, of the three things listed here, the
22 cash has been delivered, the government
23 securities have not, and the letters of credit
24 have not.
25 A. Yes. That's my understanding.

Page 159

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 referring to?
3 Q. Sure. The lines 16 and 26 on
4 Exhibit 377A, page 3, are those corresponding
5 to any numbers in your handwritten notes which
6 are Exhibit 399A?
7 A. Yes. The total of the cash and
8 governments number in -- on page 399A
9 corresponds to the total of sales F-16 and
10 F-26 on page 3 of 377A.
11 Q. So the numbers we were talking
12 about on 377A, page 3, are the same which
13 you've got here on your handwritten notes
14 except that 377A does not include the letters
15 of credit?
16 A. That's correct. There's small
17 rounding differences but it's essentially the
18 same number.
19 Q. And have the letters of credit
20 been delivered?
21 A. No.
22 Q. So when you were testifying
23 earlier that about a billion dollars from the
24 2.29 had not been received -- and to be clear
25 the 2.29 is referring to page 3 of

Page 161

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. So you come to a total of \$2.554
3 billion approximately.
4 A. Yes.
5 Q. For those three categories,
6 correct?
7 A. That's right.
8 Q. Do you know what the total would
9 be for margin held at other exchanges?
10 A. The margin held at other exchanges
11 is included in the --
12 Q. Just to be clear you're referring
13 to 337A?
14 A. Yes. Page 3 of 377A the amount
15 which is included in the acquisition balance
16 sheets there is -- actually, it's aggregated.
17 It is an element of cell F-20.
18 Q. And that's future assets?
19 A. Yes.
20 MR. SHAW: Futures assets.
21 MR. WOOD: I'm sorry. Thank you.
22 Futures assets.
23 A. Yes.
24 Q. And is it your understanding that
25 that cell 20-F number includes the derivatives

Page 162	Page 163
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 securities themselves and margin?</p> <p>3 Just to be clear, I was asking</p> <p>4 about the margin, collateral, et cetera.</p> <p>5 A. The total or net futures balance</p> <p>6 sheet including derivative positions and</p> <p>7 margin is the net of cell F-20 and cell E-44.</p> <p>8 Q. So those two combined; is that</p> <p>9 correct?</p> <p>10 A. So E-44 is a liability. So the</p> <p>11 net is 1.18.</p> <p>12 Q. Got it.</p> <p>13 A. Feeds through to the summary</p> <p>14 balance sheet which is on page 2 of 377A which</p> <p>15 is cell G-17. The only difference between</p> <p>16 those two pages is that on page 2 certain</p> <p>17 items are shown net for convenience. Futures</p> <p>18 being one of them.</p> <p>19 Q. And so margin deposits and</p> <p>20 collateral would be included within the 1.18</p> <p>21 number?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know how much of that 1.18</p> <p>24 number?</p> <p>25 A. I don't have a breakdown at hand,</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 no.</p> <p>3 Q. What else does that 1.18 number</p> <p>4 include? Besides margin and collateral?</p> <p>5 A. I'm talking about the main items</p> <p>6 on page 2 of 399A. And the last bullet item.</p> <p>7 Q. I'm sorry. You're on 399A?</p> <p>8 A. Yes. This was just to jog my</p> <p>9 memory as to the main things which are</p> <p>10 included in that number.</p> <p>11 Q. Sure.</p> <p>12 A. So it's margin, both held by --</p> <p>13 which is held by either LBI or brokers and</p> <p>14 exchanges. And then there's net debit or</p> <p>15 credits with domestic and foreign brokers. So</p> <p>16 those items are net margin and position</p> <p>17 numbers which we've never really looked at --</p> <p>18 well, I've never included gross on the</p> <p>19 acquisition balance sheet because for</p> <p>20 accounting purposes we show them net. Because</p> <p>21 of the way those exchanges operate. And so</p> <p>22 it's essentially -- it's the net of margin and</p> <p>23 customer accounts. That's what the 1.18 is.</p> <p>24 Q. But you don't know how to break</p> <p>25 out the -- I'm sorry. Let me rephrase that.</p>
Page 164	Page 165
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 You don't know what the number for</p> <p>3 margin would be in isolation?</p> <p>4 A. Sitting here now, no.</p> <p>5 Q. Any of these documents we've been</p> <p>6 through so far in the deposition, to your</p> <p>7 knowledge, do any of those documents show the</p> <p>8 number for margin held at exchanges other than</p> <p>9 the OCC?</p> <p>10 A. No. In the documents which we</p> <p>11 included today, did that include futures? It</p> <p>12 did.</p> <p>13 MR. SHAW: I think it did. You</p> <p>14 may have a document in that pile we</p> <p>15 showed you.</p> <p>16 A. There is a document in the pile</p> <p>17 which shows some items.</p> <p>18 MR. SHAW: If you want to hand</p> <p>19 help me the pile he could probably pull</p> <p>20 it out for you.</p> <p>21 A. It's not the complete</p> <p>22 reconciliation but it probably includes most</p> <p>23 of them.</p> <p>24 Q. A couple of these I made some</p> <p>25 handwritten notes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. There's two spreadsheets.</p> <p>3 Q. These first two are all you need?</p> <p>4 Are you asking only for the first two?</p> <p>5 A. There's two spreadsheets. This</p> <p>6 one (indicating). Here. So this one and this</p> <p>7 one (indicating). That shows which -- that</p> <p>8 shows --</p> <p>9 Q. We're going to want to mark that</p> <p>10 but before I do that could you tell me which</p> <p>11 one here you wanted to do first?</p> <p>12 A. I don't mind.</p> <p>13 Q. So which one of these two were you</p> <p>14 going to point me to?</p> <p>15 A. Both of them.</p> <p>16 Q. Okay.</p> <p>17 MR. WOOD: Mark both of these</p> <p>18 documents.</p> <p>19 (Deposition Exhibit 404A, balance</p> <p>20 sheet, marked for identification as of</p> <p>21 this date.)</p> <p>22 (Deposition Exhibit 405A, balance</p> <p>23 sheet, marked for identification as of</p> <p>24 this date.)</p> <p>25</p>

Page 166

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 BY MR. WOOD:
3 Q. Okay. Mr. Romain, I'm handing you
4 two one-page documents, 404A and 405A. Each
5 is a one-page spreadsheet which your counsel
6 produced at the beginning of this deposition
7 today. Do either or both of those --
8 MR. SHAW: Sorry. Did I get 405A?
9 MR. WOOD: We could pause. I'm
10 sure we have another one somewhere.
11
12 BY MR. WOOD:
13 Q. Mr. Romain, would either
14 Exhibit 404A or 405A or both aid you in
15 answering my question about the total amount
16 of margin held on behalf of LBI at exchanges
17 other than the OCC?
18 A. It's helpful in that it shows the
19 breakdown of large constituent items. To give
20 a single number I would need a reconciliation
21 between these and the acquisition balance
22 sheet which I don't have to hand but it is
23 assistance in showing some of the items.
24 Q. Should we start with 404A?
25 A. Sure.

Page 168

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 mutual funds were margin posted by customers
3 that was not totally -- it was held by LBI.
4 It wasn't posted with any exchange.
5 Q. And where if anywhere does that
6 fit into your notes, your handwritten notes,
7 which are Exhibit 399A?
8 A. That is -- under Items it is the
9 first subbullet where it says Cash mutual
10 funds, margin held by LBI, not at exchange.
11 Q. And these have already been
12 received? By Barclays, correct?
13 A. These have -- yes, they have
14 already been received.
15 Q. And pursuant to what part of the
16 agreements between the parties as part of the
17 sale transaction were these \$2.197 billion in
18 assets transferred?
19 A. That was -- they form part of the
20 collateral bridge by customers against
21 customer accounts which were taken off as part
22 of the transaction. So we took on the account
23 and the related collateral which had been
24 posted.
25 Q. And just so I understand so these

Page 167

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Could you explain what this
3 document is?
4 A. Yes. So this breaks down some
5 items of margin, contractual -- in reaction to
6 exchange rate future contracts at various
7 exchanges. The top two items -- well, the top
8 item -- there's a list of items under money
9 market funds which comes down to 1,063 and
10 cash 871. They -- those numbers are based on
11 the 6th of October actually when -- my
12 understanding is that these items were
13 physically transferred across right on the
14 acquisition date. So you'll see my note on
15 the left-hand side which actually indicates
16 that the total of these items included in the
17 acquisition balance sheet is 2.79 million
18 rather than 1.934 perhaps because we needed to
19 quantify a value as at the 22nd of September
20 rather than the 2nd of October. But it still
21 shows the nature of the items included.
22 It then shows --
23 Q. Before you move on can I just ask
24 you about that? Are these margin deposits?
25 A. These -- this is -- the cash and

Page 169

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 are all related to customer accounts, not
3 proprietary accounts?
4 A. Were these all -- my understanding
5 is these were all customers.
6 Q. Okay. I know I interrupted you so
7 was there anything else you wanted to cover
8 under that heading money market funds before
9 we turn to foreign brokers?
10 A. No.
11 Q. Okay. So could you explain to me
12 what the entries are under foreign brokers?
13 A. They were amounts of collateral
14 which had been placed with brokers overseas
15 which again related to customer accounts which
16 had been taken on but were being held. Being
17 held overseas.
18 Q. And so the total that's been
19 received as of the creation of this document
20 was 265 million, closer to 266 million; is
21 that correct?
22 A. Yes.
23 Q. And then there's another 99
24 million that had not been received.
25 A. Yes.

Page 170

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Do you know when this document had
3 been created?
4 A. Not precisely but it was recent.
5 In the last few days.
6 Q. So to your knowledge are those
7 numbers still accurate?
8 A. I'm not aware of any changes to
9 those numbers.
10 Q. And what's this entry Lehman
11 entities?
12 A. This represents collateral which
13 was placed -- this relates to collateral which
14 was placed with exchanges whereby the Lehman
15 entity that had the exchange membership was
16 not LBI so was placed by an affiliate entity.
17 Q. And then just to be clear, the
18 headings money market funds and the two
19 headings for foreign brokers, those all are
20 LBI?
21 A. Yes.
22 Q. So now looking at this page what
23 is the total amount of margin that was held by
24 LBI at foreign exchanges?
25 A. Foreign exchanges. LBI.

Page 172

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 the items which are not -- which are not
3 included here but do feed into the total asset
4 number which is included in cell F-20 at page
5 3 of 377A are firstly the -- oh, no, we're not
6 talking about OCC, are we? Okay.
7 Q. Well, no, I was actually. What I
8 was trying to do here is to total up at least
9 three things; one was the margin and
10 collateral held at foreign exchanges reflected
11 in the middle of 404A, the OCC margin
12 reflected on page 2 of your handwritten notes.
13 A. Right.
14 Q. And then we had this money market
15 funds.
16 Is there anything else that you
17 would add in to get the total margin held to
18 secure exchange rate derivatives?
19 A. Yeah. You'd add in the second
20 bullet under items which is --
21 Q. On what document?
22 A. Which is in document 399A on the
23 second page which is margin which is held at
24 broker exchanges by LBI for Treasury bills
25 which is not included in this summary. It's

Page 171

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Is that the approximately 365
3 million?
4 A. Yes.
5 Q. Are you aware of any other margin
6 or collateral held at foreign exchanges?
7 A. Well, I believe that -- I believe
8 that some of the items included under Lehman
9 entities would have been held by foreign
10 exchanges but not LBI. I'm not sure exactly
11 what the amount would be.
12 Q. So to get the total margin held by
13 LBI, and by that I mean margin and collateral,
14 would that be the approximately 365 million at
15 foreign exchanges, the 2.554 billion
16 approximately that we talked about earlier at
17 the OCC, which is on page 3 of your
18 handwritten notes, Exhibit 399A, plus this
19 2.197 billion under the heading money market
20 funds at the top of 404A?
21 A. I'm sorry, yes. That isn't quite
22 the total. This is -- this is --
23 Q. And I'm speaking of LBI here.
24 A. Yes. Yes. This doesn't
25 include -- to the best of my recollection now,

Page 173

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 not included in 404A.
3 Q. So margin held that's not at
4 exchanges, is that something that Barclays is
5 expecting to receive?
6 A. The stuff which is not held at
7 exchanges is the money markets and cash
8 amounts from 404A which has been received.
9 Q. I'm sorry. So everything under
10 this heading money market funds, those are not
11 at exchanges.
12 A. Yeah. They were not at exchanges,
13 that's right. There was additional margin
14 which was held by LBI at exchanges largely in
15 the form of Treasury bills which again had
16 been received.
17 Q. And is that reflected anywhere on
18 404A?
19 A. It's not, no. 404A was intended
20 to be a complete listing. It was a breakdown
21 of certain items which had a breakdown to show
22 their constituent parts. If you total these
23 up it does not equal the 3.78 total number
24 that we talked about in 377A. There is a
25 breakdown behind that which totals up to that

Page 174

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 number which includes everything on 404A but
3 also includes the Treasury bill item that I
4 mentioned there.
5 Q. And where's that breakdown?
6 A. The Treasury bill item is not --
7 the only mention of it is in the documents
8 we're looking at is in my handwritten notes
9 when I was prompting myself as to what the
10 component parts of the total futures number
11 was.
12 Q. And so the T-bills are included in
13 the 3.78?
14 A. They are, yes.
15 Q. Is there anything else that went
16 into the 3.78?
17 A. Is there anything else that went
18 into the 3.78.
19 I couldn't say with absolutely
20 certainly there weren't other similar items
21 but those were the substantial items.
22 Q. In that case do you know what the
23 number is for the T-bills?
24 A. Off the top of my head, I don't
25 know.

Page 176

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. Sure.
3 Q. The total value of the margin and
4 collateral held at foreign exchanges is the
5 365 million on 404A?
6 A. By LBI, yes.
7 Q. By LBI, right.
8 So looking at page 2 of
9 Exhibit 399A we just talked a moment ago about
10 the T-bills. The next line looks like there's
11 something written there in a circle. What is
12 that?
13 A. That was a note to myself
14 yesterday as OS meaning outstanding. I wanted
15 to understand what exchanges were primarily
16 included in that number.
17 Q. Sorry. In which number?
18 A. Within the domestic exchanges item
19 in the acquisition balance sheet. Which is
20 not included in the -- it's not included in
21 the schedule 404A but it is one of the
22 constituent parts of the net futures number in
23 the acquisition balance sheet.
24 Q. You said you wanted to find out
25 what exchanges were included in that?

Page 175

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Since there's other items we can't
3 figure it out just by adding up the numbers we
4 have and figuring out what the delta is,
5 right?
6 A. I feel slightly sorry saying that
7 was definitely what you could do because I may
8 have forgot some smaller items. The 3.78 is
9 the total -- well, the 3.78 less the item of
10 2.6 in cell E-44 is the net of the total
11 margin and customer positions which were taken
12 on. It has a number of components some of
13 which are broken down here but that's what the
14 net of those two numbers represent.
15 Well, to be absolutely complete
16 that's what it represents in terms of the
17 items which were included in the acquisition
18 balance sheet. As touched on earlier in
19 testimony, the futures collateral which is
20 held at affiliates is not included in the
21 acquisition balance sheet. We haven't
22 recognized as an asset as yet.
23 Q. I think I asked you this before
24 and got your answer but I just want to make
25 sure just in case I missed this.

Page 177

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. Yeah.
3 Q. And did you find that out?
4 A. I did, yeah. It was a number of
5 different exchanges. The most significant
6 balance was CME.
7 Q. And do you know the total number
8 for those domestic exchanges?
9 A. Without the breakdown in front of
10 me I wouldn't want to guess.
11 Q. Do you remember a ball park?
12 A. My recollection is the ball park,
13 it's a net asset of approximately
14 \$500 million.
15 Q. And is that margin?
16 A. That's the net of margin and
17 customer positions in those exchanges. Those
18 are exchanges where we face the exchange. So
19 from our position -- from our point of view we
20 have a net position with the exchange.
21 Q. And the next line is foreign
22 brokers. You also have that listed as
23 outstanding?
24 A. No, no.
25 Q. Oh, the OS does not refer to that?

Page 178	Page 179
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Okay. What does that line mean</p> <p>4 then?</p> <p>5 A. So that's the amount of 365 we</p> <p>6 were just talking about.</p> <p>7 Q. Okay. And the next line on your</p> <p>8 handwritten notes is affiliates; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. What does that say in the</p> <p>12 parenthetical?</p> <p>13 A. With exchange membership. So</p> <p>14 that's the items at the bottom of 404A where</p> <p>15 it talks about that it was LBI that had the</p> <p>16 exchange membership so the position was -- it</p> <p>17 was between another Lehman entity.</p> <p>18 Q. Now we'll turn your attention to</p> <p>19 Exhibit 405A.</p> <p>20 A. Yes.</p> <p>21 Q. What is this document?</p> <p>22 A. 405A is collateral for proprietary</p> <p>23 rather than customer positions.</p> <p>24 Q. And where is this held?</p> <p>25 A. That's -- the customer ID is on</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 the left. In terms of when -- which exchanges</p> <p>3 I'm not sure.</p> <p>4 Q. Does it include OCC?</p> <p>5 A. This item doesn't include OCC.</p> <p>6 The OC -- OCC accounts, the -- in the</p> <p>7 acquisition balance sheet, the 074 accounts</p> <p>8 are ones which are included in the OCC items.</p> <p>9 So the -- so on page 3 of 377A it's item F-16</p> <p>10 and F-26 and the 084 accounts are included</p> <p>11 within the futures item. So the 3.78 in row</p> <p>12 20 and the 2.6 in row 44.</p> <p>13 So all of the OCC positions are</p> <p>14 included. They're included into separate --</p> <p>15 two separate items.</p> <p>16 Q. I just want to make sure I</p> <p>17 understood your last answer. So when you said</p> <p>18 all the OCC positions are included you meant</p> <p>19 included in 377A?</p> <p>20 A. Exactly.</p> <p>21 Q. But they're not included in</p> <p>22 Exhibit 405A?</p> <p>23 A. That's correct. They are</p> <p>24 different items, yes.</p> <p>25 Q. And for Exhibit 405A, are these</p>
Page 180	Page 181
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 all held at exchanges?</p> <p>3 A. Are they all held at exchanges.</p> <p>4 I'm not certain that it's all held</p> <p>5 at exchanges. It's certainly my understanding</p> <p>6 that the majority is but I didn't get into</p> <p>7 that level of granularity for the purposes of</p> <p>8 this schedule.</p> <p>9 Q. And are these all foreign? And by</p> <p>10 that, just to be clear I mean non-United</p> <p>11 States?</p> <p>12 MR. SHAW: Objection to form.</p> <p>13 Q. Let me rephrase that.</p> <p>14 To the extent they're held at</p> <p>15 exchanges are they all non-US exchanges?</p> <p>16 A. I'm not aware of any US exchanges</p> <p>17 included here. I couldn't say with absolute</p> <p>18 certainty but I'm not aware of any held with</p> <p>19 US exchanges.</p> <p>20 Q. Now, can you explain your note at</p> <p>21 the bottom of 405A which appears to be some</p> <p>22 sort of a total?</p> <p>23 A. Yeah. The total is essentially</p> <p>24 the total of the items which have got a yes --</p> <p>25 a Y rather than an N in the last column.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And what does a Y mean?</p> <p>3 A. A Y means there were live trades</p> <p>4 in that account on 22nd of September and,</p> <p>5 therefore, we were taking on the positions and</p> <p>6 the collateral. The ones with the N we've not</p> <p>7 claimed the collateral in those accounts</p> <p>8 because there were no live trades on the 22nd</p> <p>9 of September. I would say the total there --</p> <p>10 I do recall I didn't have a calculator at the</p> <p>11 time so it was done mentally so hopefully it's</p> <p>12 accurate.</p> <p>13 Q. The 482 million approximately is</p> <p>14 your rough total of all the ones that have a Y</p> <p>15 by them?</p> <p>16 A. That's right.</p> <p>17 Q. And the ones that are N, those</p> <p>18 just stayed?</p> <p>19 A. They hadn't been claimed, yes.</p> <p>20 Q. Have not been claimed by Barclays.</p> <p>21 A. That's correct.</p> <p>22 Q. And you have the 482 million</p> <p>23 broken out into two categories. Could you</p> <p>24 explain those?</p> <p>25 A. Yes, sir. The 210 ones held by</p>

Page 182

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 LBI with foreign exchanges, they have been
3 recognized on the balance sheet and are,
4 therefore, included in the numbers in
5 Exhibit 377A.
6 The 272 is the total of the ones
7 which are held by Lehman affiliates which we
8 have not recognized the assets for financial
9 reporting purposes. They are -- that's part
10 of the items which -- those two items are
11 talked about on the front page of 399A. They
12 form part of the subbullet of the first bullet
13 and being an asset which has not been received
14 but is recognized on balance sheet. Futures
15 collateral at foreign brokers.
16 Q. The 210 million?
17 A. It includes the 210 million. I
18 think that's the total amount, yes.
19 Well, actually, let me be accurate
20 about that. The 210 is included in that item
21 but I haven't quantified the items so I
22 couldn't say that that's -- that is everything
23 not received. I'm not aware of anything else
24 which is included there.
25 The 272 feeds into the first

Page 184

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 what's been received and not received of the
3 365 customer.
4 A. Yes.
5 Q. Do you have something similar for
6 the proprietary ones on -- that are described
7 in 405A?
8 A. I'm not aware that we've received
9 any of that.
10 Q. Okay. That was going to be my
11 question.
12 A. Yeah.
13 Q. Mr. Romain, I'm handing you what's
14 previously been marked in another deposition
15 as Exhibit 95B.
16 MR. SHAW: Are we finished with
17 any of the exhibits you've been going
18 through?
19 MR. WOOD: For now hopefully.
20 Q. Actually, you might want to keep
21 them handy because I'm just going to ask
22 whether some of the numbers in here relate to
23 any of those. And this presumably was already
24 described when it was first introduced so I
25 won't describe it at any great length but it's

Page 183

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 subbullets of assets not received but not on
3 the balance sheet which is futures collateral
4 at affiliates. These two items -- yes,
5 actually, sorry. That was why I was
6 hesitating. I knew that I was missing
7 something. 405A is only the propositions. So
8 the items referred to on the front page of
9 399A is customer and prop. So the 210 is
10 included within the first subbullet of the
11 first bullet. And the 272 is included in the
12 460 item. But both items also included
13 customer positions.
14 Q. So focusing just on LBI, meaning
15 leaving aside the other affiliates, if I
16 wanted to know the total amount of margin held
17 at foreign exchanges on behalf of LBI, both
18 customer and proprietary, I would add up the
19 365 from 404A and the 210 from 405A?
20 A. Yes.
21 Q. And Barclays is either seeking or
22 has received both the 365 million and the 210
23 million?
24 A. That's correct.
25 Q. And 404A gives me the breakout of

Page 185

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 an e-mail with a somewhat lengthy set of
3 Options Clearing Corporation account
4 summaries.
5 And you could take as much time as
6 you want obviously to look it over but I'll
7 tell you my first question is just going to
8 relate to the e-mail at the top of the first
9 page. So the latest e-mail chronologically
10 where if you -- on the top of the first page
11 it says "The first statement shows collateral
12 of 522 million" and I'm going to ask you about
13 that.
14 (Document review.)
15 A. Okay.
16 Q. So if you see the e-mail at the
17 top. So the latest one chronologically to Ian
18 Lowitt from Francis Pearn. It says, "Craig
19 Jones provided the OCC statements as of
20 September 22nd for the LBI 074 account. The
21 first statement shows collateral value of
22 \$522 million (cash and government securities)
23 in LBI. The second file details approximately
24 2 billion of collateral (letters of credit,
25 cash and securities)."

Page 186

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 And then it continues.
3 Let's start with the 522.
4 \$522 million, do you know what that refers to?
5 A. No.
6 Q. Same question with the \$2 billion
7 of collateral?
8 A. No, no.
9 Q. Can you -- I mean, you'll see if
10 you add those two together you'll get --
11 meaning the 522 million and the 2 billion, you
12 get something close to the total you have on
13 page 2 of Exhibit 399A.
14 A. Yeah.
15 Q. Which you had 2.554 billion.
16 A. Yeah.
17 Q. This gets you -- and the numbers
18 are obviously rounded off. That gets you to
19 the 2.522 billion but they seem to break them
20 down totally differently. You have no
21 understanding what the numbers are on
22 Exhibit 95B?
23 A. No.
24 Q. Mr. Romain, we're handing you
25 what's already been marked in a previous

Page 188

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. The subject line is BIX, B-I-X,
3 statements. What does that mean?
4 MR. SHAW: Objection, foundation.
5 A. I don't know.
6 Q. Mr. Romain, could you take another
7 look at Exhibit 361A which you were handed
8 earlier in the deposition.
9 (Pause on the record.)
10 Q. You have it in front of you?
11 A. Yes.
12 Q. And I'll just note again on the
13 record that I believe this Exhibit 361A is
14 also designated as Exhibit 384. And, again,
15 it's a one-page e-mail string. Attached is
16 what your September 22nd e-mail referred to as
17 the latest acquisition balance sheet and
18 negative goodwill calculation.
19 A. Yes.
20 Q. And does this acquisition balance
21 sheet reflect Barclays' best understanding of
22 the components of the transaction as of 7:56
23 p.m. on September 22nd when you sent it?
24 MR. SHAW: Objection. Foundation.
25 A. It represents my best

Page 187

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 deposition as Exhibit 228. It's a one-page
3 e-mail followed by numerous pages, the top of
4 which says the Options Clearing Corporation.
5 A. I'm the only one without it.
6 Q. Oh, I'm sorry. Here. Take mine.
7 MR. SHAW: An interesting way to
8 take a deposition. I'd like to you
9 imagine I've handed you a document.
10 MR. WOOD: Just shows the mastery
11 of the facts that I've come to expect
12 from this witness.
13 Q. I'll ask you a similar question.
14 And obviously take as much time as you want to
15 look it over but my first question is going to
16 relate to the e-mail at the top from Gerard
17 Reilly to Chris O'Meara which says, "This has
18 been confirmed as a good balance. We are
19 going to send to BarCap who is looking for our
20 positions and balances 507m," which I assume
21 refers to \$507 million and this was on
22 September 21st.
23 Do you have any idea what that
24 number is?
25 A. No.

Page 189

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 understanding at that time.
3 Q. And did you create the document?
4 To be clear, by the document I mean the first
5 page of the attached -- well, the two-page
6 attachment.
7 A. I did.
8 Q. Now, on line 13 of the attachment
9 you have exchange traded options. That does
10 not include margin or collateral, does it?
11 A. At that time my understanding of
12 the component parts of the exchange traded
13 options item was based on very preliminary
14 information. So I wouldn't be able to answer
15 reliably as to whether that was just a
16 placeholder number somebody had given me or a
17 net of two placeholder numbers somebody had
18 given me or something else. But it was my
19 best estimate based on the information I'd
20 been provided as to the most appropriate
21 number that I could include at that time.
22 Q. And that's for exchange traded
23 options themselves, correct?
24 MR. SHAW: Asked and answered.
25 A. I can't recall.

Page 190	Page 191
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you see anywhere else in here</p> <p>3 where margin or collateral held by LBI at OCC</p> <p>4 would be included?</p> <p>5 A. Some of the numbers in here were</p> <p>6 provided to me with at that time a relatively</p> <p>7 low level of understanding as to what the</p> <p>8 component parts are so I don't think I could</p> <p>9 say definitively that the answer would be no.</p> <p>10 Q. If you'll look again at</p> <p>11 Exhibit 377A, do you know the approximate date</p> <p>12 when Exhibit 377A was created?</p> <p>13 A. This version would have been</p> <p>14 created either right at the end of January or</p> <p>15 at the beginning of February.</p> <p>16 Q. 2009?</p> <p>17 And on exhibit some 377A, line 18</p> <p>18 you have OCC customer and clearing margin?</p> <p>19 A. Sorry. Which page? The second</p> <p>20 one?</p> <p>21 Q. Second page. Line 18.</p> <p>22 A. Yes.</p> <p>23 Q. Why do you add clearing margin?</p> <p>24 A. In terms of the name attributed to</p> <p>25 that I can't recall.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did anyone suggest to you that</p> <p>3 margin should be included in the acquisition</p> <p>4 balance sheet?</p> <p>5 MR. SHAW: Objection to form.</p> <p>6 A. Yeah, I'm not sure what you mean</p> <p>7 by suggested. By that stage we had a final</p> <p>8 balance sheet so understanding as to what</p> <p>9 should be included was well formed.</p> <p>10 So notwithstanding the name of the</p> <p>11 item included in cell A-18, the understanding</p> <p>12 was that the customer positions and associated</p> <p>13 margin was included as an acquired asset and</p> <p>14 should be included in the acquisition balance</p> <p>15 sheet.</p> <p>16 Q. If you look still on Exhibit 377A</p> <p>17 page 2, line 14, you'll see the entry for</p> <p>18 exchange traded options.</p> <p>19 A. Yes. Line 14 and line 18 should</p> <p>20 be viewed together. They're separate</p> <p>21 primarily because of laziness on my part.</p> <p>22 They're two items from very early on when I</p> <p>23 had little understanding of the nature of OCC</p> <p>24 as an exchange or the acquisition agreement.</p> <p>25 That understanding grew over time and it</p>
Page 192	Page 193
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 became clear that in fact I should be viewing</p> <p>3 those items together. But the spreadsheet was</p> <p>4 already set up and I didn't take the trouble</p> <p>5 to combine the lines.</p> <p>6 Q. Those lines being 14 and 18?</p> <p>7 A. Those lines being 14 and 18, yes.</p> <p>8 Q. But back in September on</p> <p>9 Exhibit 361A you didn't have them combined</p> <p>10 there, did you?</p> <p>11 A. This was a very, very early</p> <p>12 version.</p> <p>13 Q. But the exchange traded options</p> <p>14 listed on Exhibit 361A, line 13, is</p> <p>15 \$.30 billion, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, that can't possibly include</p> <p>18 the \$.98 billion of OCC customer and clearing</p> <p>19 margin that was later reflected on line 18 of</p> <p>20 Exhibit 377A, can it?</p> <p>21 MR. SHAW: Objection to form.</p> <p>22 A. I don't recall how that number was</p> <p>23 put together or who provided it to me.</p> <p>24 However, the answer to the question as to</p> <p>25 whether it could is yes, it could.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. How?</p> <p>3 A. Because it could be a net of two</p> <p>4 numbers which is the case for item C-14 which,</p> <p>5 if you turn to --</p> <p>6 Q. C-14 on which document?</p> <p>7 A. On the second page of 377A.</p> <p>8 That's a net number. It's the net of two</p> <p>9 items on the next page being line F-16 and</p> <p>10 B-42.</p> <p>11 So the second page there is a</p> <p>12 summary. For quite a few of these items there</p> <p>13 are actually gross assets and liabilities</p> <p>14 which underlie those and the item in C-14 is</p> <p>15 one of those which is shown net on that</p> <p>16 summary page.</p> <p>17 Q. And going back to line 18 again on</p> <p>18 Exhibit 377A --</p> <p>19 MR. SHAW: Page 2?</p> <p>20 MR. WOOD: Page 2.</p> <p>21 Q. -- what could that possibly be</p> <p>22 netted with to fit it within page 2 of</p> <p>23 Exhibit 361A?</p> <p>24 MR. SHAW: Objection to form.</p> <p>25 Vague. And maybe it will help you form</p>

Page 194

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 another question if I give you a little
3 more information as to what I'm
4 objecting to.
5 MR. WOOD: Sure.
6 MR. SHAW: There is a category
7 that's being captured in there and
8 there's a number that's being captured
9 in there. And so it's not clear to me
10 whether you're asking whether the number
11 that's being assigned a particular
12 category is -- can be captured inside
13 that bucket on the other sheet or
14 whether you're asking whether the
15 concept represented by the category can
16 be captured.
17 MR. WOOD: At this point I'm
18 asking about the number. I think I
19 already asked about the concept so --
20 A. In terms of the number, the
21 number --
22 Q. The .98 which is line 18 of page 2
23 of 377A.
24 A. The number which is included in --
25 Q. So if you look at 377A, line 18,

Page 196

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 did you have any estimate in mind of what the
3 margin at OCC could have been?
4 A. I don't recall. I don't recall
5 where the number came from at that time.
6 Q. Do you recall including anywhere
7 in the acquisition balance sheet attached to
8 Exhibit 361A, the OCC clearing margin?
9 A. I don't recall having an
10 understanding of the components of the 300
11 million item which is included there. So I
12 can't speak knowledgeably as to what may or
13 may not have been included in the number on
14 that date.
15 Q. On September 22nd, when you
16 created this acquisition balance sheet again
17 attached to Exhibit 361A, did you believe that
18 margin and collateral held at the OCC was part
19 of the purchase assets?
20 MR. SHAW: I'm sorry. Could you
21 read that one back, please.
22 (Record read.)
23 MR. SHAW: All right. You can
24 answer.
25 A. I don't recall.

Page 195

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 it's OCC customer and clearing margin and
3 you've got \$.98 billion.
4 A. In order to understand what I mean
5 by that those numbers it's necessary to look
6 at the numbers on the next page. However,
7 that's not necessary to ask the question. To
8 ask the question the main thing to point out
9 is the difference in dates. 361A was put
10 together on the 22nd of September with a very
11 high level understanding of what this item was
12 and what an appropriate number might be. I
13 don't recall what information it was based on
14 or who it was provided to me by. But that,
15 along with most of the other numbers which are
16 included in 361A, was based on very early
17 understanding of the acquisition. So it's not
18 possible to compare the two numbers in such a
19 way and say is this number included within
20 that number because that number was a very
21 early estimate or part of a very early
22 estimate of the acquisition balance sheet
23 based on the information I had at that time.
24 Q. When you created the acquisition
25 balance sheet that's attached in Exhibit 361A,

Page 197

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. Is there anyone else we can talk
3 to to find out whether or not margin and
4 collateral held at the OCC was included in
5 this September 22nd acquisition balance sheet?
6 A. I'm not sure how to answer that.
7 Is there --
8 Q. Is there anybody else at Barclays
9 who might be knowledgeable?
10 A. The answer to that question may be
11 yes but I don't recall where that number came
12 from so I wouldn't know who to direct you
13 towards in terms of that particular number in
14 that particular document.
15 Q. And when you say that number what
16 number are you referring to?
17 A. The number in cell C-13 of page 2
18 of Exhibit 361A.
19 Q. Is it correct that the acquisition
20 balance sheet went through several different
21 versions or drafts between the September 22nd
22 version we're looking at in Exhibit 361A and
23 the version I believe you said was probably
24 January or February of this year that's marked
25 as Exhibit 377A?

Page 198	Page 199
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 MR. SHAW: Objection. Asked and 3 answered. 4 A. Yes. It went through a large 5 number of iterations. It was a working 6 document. 7 Q. Do you know if this line for OCC 8 customer and clearing margin was included in 9 any of the versions prior to 377A? 10 A. I don't recall what the versions 11 prior to -- oh, 377A? 12 Q. Yes. 13 A. An item related to OCC accounts 14 was included in versions between those two 15 dates, yes. 16 Q. Just to be clear, I'm referring to 17 OCC margin. If it helps you you can look at 18 again line 18 of page 2 of Exhibit 377A 19 entitled OCC Customer and Clearing Margin. 20 A. Yeah. 21 Q. Do you know if that line and that 22 title was included in -- or a title similar to 23 that was included in any versions prior to 24 377A? 25 MR. SHAW: Objection to form. You</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 can answer. 3 A. Lines with titles similar to that 4 were included in drafts between those two 5 dates, yes. 6 Q. Do you know approximately when 7 they were included? First included I should 8 say. 9 A. I don't remember exactly when, no. 10 Q. Do you recall generally when? 11 A. No. No. In terms of context, my 12 understanding of the appropriate amount to 13 include in that line item as it eventually was 14 represented developed over time. And 15 certainly from my perspective there was 16 significant conservancy around what the 17 acquisition documents meant initially because 18 I was not involved in the negotiations so I 19 had to read the documents and speak to people 20 who were involved in those negotiations, speak 21 to people who traded on those exchanges to get 22 that understanding, and also secure sufficient 23 resource to assist me in chasing down the 24 numbers which was a process which took a 25 significant amount of time. We obviously had</p>
Page 200	Page 201
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 the end point of our financial reporting in 3 January and February in mind and we were 4 always including -- I was always including my 5 best representation of the balance sheet and 6 all items through that period. 7 But necessarily that understanding 8 as it's represented there went through 9 significant change, not just that item but all 10 items, as the degree of information and the 11 amount of work increased over the period. 12 Q. Did anyone point out to you that 13 OCC margin was missing from earlier iterations 14 of this? 15 A. I don't recall what the component 16 parts of the number in 0.3 were or who 17 provided it to me so I couldn't answer 18 accurately as to whether that number was an 19 early representation of a net number of two 20 larger gross items or any other number of 21 possibilities as to what it represented 22 without a recollection of where it came from. 23 Certainly, over time the 24 appropriate interpretation of the acquisition 25 agreements and terms were something which I</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 acquired and we then did work to quantify what 3 numbers should be included on that basis. 4 And that occurred during the weeks 5 after the acquisition date. 6 Q. I think I was asking a slightly 7 different question which is did anybody ever 8 point out to you that he or she thought that 9 the acquisition balance sheet was missing OCC 10 margin? 11 A. I think that was the question I 12 was trying to answer, though. I'm not sure 13 whether people would have had a good view that 14 something was missing because it's not clear 15 to me whether -- it's not clear to me and it 16 wouldn't have been clear to other people 17 without understanding of how the 0.3 was put 18 together as to what was included and what was 19 not included. So I don't recall it being 20 pointed out to me that there was anything 21 missing. 22 MR. SHAW: When we reach a 23 reasonable breaking point. 24 MR. WOOD: Sure. We can do it now 25 if you'd like.</p>

Page 202	Page 203
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 (Recess taken.) 3 BY MR. WOOD: 4 Q. Mr. Romain, when was margin held 5 to secure derivatives first included in the 6 deal between Lehman and Barclays? 7 A. I'm not sure. I wasn't involved 8 in the negotiations so I couldn't answer the 9 question. 10 Q. When did you first come to believe 11 that margin held to secure derivatives was 12 included in the deal? 13 A. Could you clarify? Do you mean 14 when I first came aware or with the awareness 15 I have now when do I think it was first 16 included? 17 Q. When did you first become aware? 18 A. I don't recall. 19 MR. SHAW: Are we on -- this is a 20 30(b)(6) question? 21 MR. WOOD: Yes. 22 MR. SHAW: You may want to refer 23 to your notes. 24 Q. Yes. Feel free to refer to your 25 notes.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 A. Sure. 3 (Document review.) 4 Q. After looking at your notes did 5 you want to add anything to your answer? 6 A. It depends which question you're 7 asking. If you're asking when did I become 8 aware myself, I don't recall when I became 9 aware. If you're asking when they became part 10 of the deal, I wasn't involved in the 11 negotiations myself but being aware that it 12 was going to be an item we were going to be 13 talking about today I had a number of 14 conversations with people who would assist me 15 in understanding a little more about the 16 negotiation of the transfer and assumption 17 agreement and they are summarized in the notes 18 on pages 3 and 4 of Exhibit 399A. 19 Q. And who did you have those 20 conversations with? 21 A. With Ed Rosen who is a lawyer at 22 Cleary Gottlieb and with Jonathan Hughes who 23 is Barclays' general counsel. 24 Q. And did your conversations with 25 Mr. Rosen refresh your recollection on this</p>
Page 204	Page 205
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 point? 3 A. They didn't refresh my 4 recollection. I wasn't involved in the 5 negotiation. But they provided to me the 6 information that's summarized there as regards 7 his involvement in the negotiation of that 8 arrangement. 9 Q. So as a 30(b)(6) witness can you 10 tell me when margin to secure derivatives was 11 added to the proposed deal between Lehman and 12 Barclays Capital? 13 A. I can tell you that we were 14 continuing to look into specific conversations 15 and communications around the negotiation 16 process. But as a minimum they were -- the 17 terms of the transfer and assumption 18 agreements were part of discussions between 19 Barclays' trustee and the OCC prior to 20 agreeing to the transfer and assumption 21 agreements. 22 Q. Prior to the signing of the TAA 23 was margin held to secure derivatives included 24 anywhere in the deal between Lehman and 25 Barclays?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 A. Prior to the signing of the 3 transfer and assumption agreement. 4 Q. Correct. 5 A. The inclusion of collateral in the 6 deal was most directly included and clarified 7 in the clarification letter. 8 Q. And where -- 9 A. To the Asset Purchase Agreement. 10 Would it be possible to get the 11 rest of the e-mails which I'm referring to? 12 MR. WOOD: First of all, does 13 everybody have Exhibit 25? I've now 14 handed the witness what's previously 15 been marked as Exhibit 25. What we 16 refer to as the clarification letter. 17 A. Yes. 18 Q. And can you point me to the 19 relevant language in Exhibit 25 that according 20 to Barclays provides Barclays' the margin held 21 to secure derivatives? 22 MR. SHAW: Take your time. Look 23 through the document. 24 A. In terms of the extent to which 25 it's included in this document it's within</p>

Page 206	Page 207
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 paragraph 8.</p> <p>3 Q. I'm sorry. Paragraph what?</p> <p>4 A. Eight.</p> <p>5 Q. And could read me the language</p> <p>6 you're referring to.</p> <p>7 A. Transfer of Customer Accounts.</p> <p>8 All customer accounts of LBI (other than</p> <p>9 customers who are affiliates of LBI) shall be</p> <p>10 transferred to purchaser in connection</p> <p>11 therewith --</p> <p>12 Q. If I can just interrupt, are you</p> <p>13 planning to read the whole paragraph or was</p> <p>14 there a particular passage in the paragraph?</p> <p>15 A. No, I was going to stop there.</p> <p>16 Q. Okay. Continue. Sorry.</p> <p>17 A. In connection therewith purchaser</p> <p>18 shall receive, one, for the accounts of the</p> <p>19 customer, any and all property of any customer</p> <p>20 including any held by or behalf of LBI to</p> <p>21 secure the obligations of any customers whose</p> <p>22 accounts had been transferred to purchaser as</p> <p>23 part of the business.</p> <p>24 I'll stop there.</p> <p>25 Q. Are there any other provisions in</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 the clarification letter that provide Barclays</p> <p>3 the margin to secure derivatives?</p> <p>4 MR. SHAW: Objection to form.</p> <p>5 A. I'm not sure I can answer the</p> <p>6 question just because it's -- my memory is</p> <p>7 letting me down. Is there anything else. I'd</p> <p>8 be happy to read the whole thing to make sure</p> <p>9 that there's nothing else which -- that I was</p> <p>10 referring to when reaching the understanding</p> <p>11 in combination with discussions with other</p> <p>12 parties. But I would confirm that it's that</p> <p>13 paragraph which was the primary one which I</p> <p>14 was always referred to when asking that</p> <p>15 question.</p> <p>16 Q. Now, this clarification letter,</p> <p>17 Exhibit 25, is -- on page 1 says it's dated as</p> <p>18 of September 20th but I can tell you we've</p> <p>19 heard testimony to the effect that it was</p> <p>20 signed on the 22nd. Which is the same date</p> <p>21 that the TAA was signed.</p> <p>22 Prior to September 22nd, to your</p> <p>23 knowledge, did any iterations of the deal</p> <p>24 between Lehman and Barclays provide that</p> <p>25 margin to secure derivatives was part of</p>
Page 208	Page 209
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 purchase assets?</p> <p>3 A. My understanding of the</p> <p>4 acquisition of these positions is that they're</p> <p>5 daily margined derivatives positions. So it's</p> <p>6 difficult to view the positions and margin as</p> <p>7 separately.</p> <p>8 In terms of whether there was</p> <p>9 specific signed documentation which referred</p> <p>10 directly to the collateral, I'm not sure</p> <p>11 whether that is the case. But my</p> <p>12 understanding is that it was understood that</p> <p>13 they are viewed together and that the</p> <p>14 clarification letter was just that, a</p> <p>15 clarification of the deal which it was</p> <p>16 understood that we'd entered into.</p> <p>17 Q. As you may know there was an</p> <p>18 original Asset Purchase Agreement which was</p> <p>19 signed by the parties I believe on September</p> <p>20 16th and so then the clarification letter and</p> <p>21 the TAA as we refer to it came along later.</p> <p>22 As part of the earlier deal as it</p> <p>23 was on September 16th was margin held to</p> <p>24 secure derivatives included in that deal?</p> <p>25 MR. SHAW: Objection. Asked and</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 answered. He just told you that it was</p> <p>3 always the deal.</p> <p>4 A. Yeah. I'm not sure I could answer</p> <p>5 that any more clearly.</p> <p>6 (Pause on the record.)</p> <p>7 Q. Mr. Romain, I'm handing you what's</p> <p>8 been previously marked at another deposition</p> <p>9 as Exhibit 49. It's an e-mail from Dave</p> <p>10 Leinwand to several individuals dated</p> <p>11 Saturday, September 20th at 11:13 p.m. The</p> <p>12 subject is Revised clarification letter. The</p> <p>13 content of the e-mail just says "Attached is a</p> <p>14 revised draft of the clarification letter.</p> <p>15 The attached has not been reviewed by Barclays</p> <p>16 and remains subject to comment."</p> <p>17 And attached to it is what appears</p> <p>18 to be two versions, two drafts of the</p> <p>19 clarification letter. One has red-line</p> <p>20 markings, the other appears not to. We'll</p> <p>21 just start with the one that does not have a</p> <p>22 red line so the first attachment there.</p> <p>23 If you look on page 2 and just to</p> <p>24 be clear this is Bates number at the become</p> <p>25 ends in 24956.</p>

Page 210	Page 211
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 Are you with me? It should be the 3 second page. 4 A. I don't have that page. It just 5 goes from page 1 to page 3. 6 MR. SHAW: Actually so does mine. 7 MR. McMAHON: We should have 8 another copy here. 9 MR. WOOD: Yeah. We should have a 10 good copy. 11 (Pause on the record.) 12 Q. Now hopefully you have both the 13 odd and even numbered pages of the attachment. 14 A. Yes. 15 Q. Do you see the second page ending 16 in 24956 at the bottom? 17 A. Yes. 18 Q. If you look in the middle of the 19 page there's a paragraph D. 20 A. Yeah. 21 Q. And just to be clear, that's all 22 part of the definition of purchase assets; 23 excluded assets that begins on the prior page? 24 A. Um-hum. 25 Q. And then on paragraph D about the</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 fifth line down do you see an underline 3 provided? 4 A. Yes. 5 Q. It says "Provided that 'excluded 6 assets' shall not include..." and then it has 7 a little Roman numeral i. Little Roman 8 numeral ii is Cash, cash equivalents, bank 9 deposits, or similar cash items maintained (a) 10 by or on behalf of LBI pursuant to Rule 11 15(c)(3)-3 of the Securities Exchange Act of 12 1934 or otherwise, or by or on behalf of any 13 clearing agency or clearing organization to 14 collateralize, guarantee, secure (whether as 15 margin, guarantee, fund deposit or in any 16 other form) the obligations of LBI or any 17 other person in an account maintained by or 18 behalf of LBI for which purchaser shall become 19 responsible as of the closing pursuant to the 20 requirement of any such clearing agency or 21 clearing organization." 22 Do you see that language? 23 A. Yes. 24 Q. Have you read that language 25 before?</p>
Page 212	Page 213
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 A. Yes. 3 Q. And so you -- I take it you've 4 seen this particular draft of the 5 clarification letter? As far as you can tell. 6 A. Well, I should clarify. I've seen 7 the language which was included in the final 8 draft. I don't think I've ever seen this 9 draft. 10 Q. Okay. This language that I read 11 was not included in the executed version of 12 the clarification letter, was it? 13 A. Okay. Well, I've seen the 14 excluded assets definition so if that language 15 is not included in the final version I would 16 not have seen that language before. 17 Q. Do you see in the language I read 18 the parenthetical that says whether it's 19 margin, guarantee, fund deposit or in any 20 other form? 21 A. Yes. 22 Q. That language did not make it into 23 the executed version of the clarification 24 letter, did it? 25 A. I wouldn't be able to answer that</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 without comparing it to the executed document. 3 I haven't memorized the executed document. 4 Q. That's okay. So then I take it 5 you're not aware of at any point at which this 6 language was dropped? 7 A. We're continuing to look into 8 matters in relation to the drafting -- 9 successive drafting of the agreements. At 10 this point I'm not aware. 11 Q. So I take it you wouldn't be aware 12 of why it was dropped. 13 A. I wouldn't know. 14 Q. Was the bankruptcy court that was 15 overseeing the LBHI and the LBI proceedings 16 ever informed that margin held to secure 17 derivatives was part of the purchase assets? 18 MR. WOOD: I'll just note on the 19 record that counsel pointed out -- 20 MR. SHAW: Yeah. I'm indicating 21 his notes because it shows as a result 22 of his investigation. 23 MR. WOOD: So I'll just note on 24 the record that counsel is pointing the 25 witness to I believe his handwritten</p>

Page 214	Page 215
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 notes.</p> <p>3 MR. SHAW: Exhibit 399A.</p> <p>4 A. In terms of the disclosure of the</p> <p>5 acquisition of the derivatives and associated</p> <p>6 collateral it was disclosed to LBHI, the SIPA</p> <p>7 trustee, creditors' committee, and other</p> <p>8 interested parties in the APA, the sale order</p> <p>9 and the clarification letter and in the TAA</p> <p>10 and we're currently investigating other</p> <p>11 disclosures.</p> <p>12 Q. Now, as I understand your answer</p> <p>13 you mentioned LBHI, the SIPA trustee, the</p> <p>14 creditors' committee. You didn't mention the</p> <p>15 bankruptcy court there, did you?</p> <p>16 MR. SHAW: He mentioned other</p> <p>17 interested parties.</p> <p>18 Q. Were you including the bankruptcy</p> <p>19 court in the other interested parties?</p> <p>20 A. It was disclosed to parties, the</p> <p>21 APA, the clarification letter, the TAA. And</p> <p>22 to answer more fully as to who was informed</p> <p>23 when, on that particular point that's an area</p> <p>24 which I continue to look into.</p> <p>25 Q. Do you know whether the bankruptcy</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 court was ever informed orally of the</p> <p>3 inclusion of margin held to secure derivatives</p> <p>4 in the deal?</p> <p>5 MR. SHAW: Objection, foundation.</p> <p>6 A. I don't know but we are continuing</p> <p>7 to look into and investigate other disclosures</p> <p>8 of facts -- of that fact.</p> <p>9 Q. Mr. Romain, other than the Asset</p> <p>10 Purchase Agreement, the clarification letter,</p> <p>11 and the TAA, all of which I believe you</p> <p>12 mentioned, are you aware of any other manner</p> <p>13 in which the bankruptcy court was informed of</p> <p>14 the inclusion of margin held to secure</p> <p>15 derivatives in the deal?</p> <p>16 MR. SHAW: Did you mean to leave</p> <p>17 out the sale order which was in the list</p> <p>18 that he read to you?</p> <p>19 MR. WOOD: I'll add in the sale</p> <p>20 order. Thank you.</p> <p>21 A. At this time I'm not aware of any</p> <p>22 other means by which the bankruptcy court was</p> <p>23 made aware. But as I'm saying we continue to</p> <p>24 investigate any other disclosures that were</p> <p>25 made.</p>
Page 216	Page 217
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Mr. Romain, I'm handing you what's</p> <p>3 previously been marked as Exhibit 209. Feel</p> <p>4 free to take a moment to look that over.</p> <p>5 (Document review.)</p> <p>6 MR. WOOD: Okay. I'll just note</p> <p>7 for the record that I believe one of the</p> <p>8 documents that was marked earlier in</p> <p>9 this exhibit comes from a -- comes from</p> <p>10 the same e-mail chain but that this one</p> <p>11 I believe was not previously marked. Or</p> <p>12 used during this deposition.</p> <p>13 Q. So if you see on page 2 of this</p> <p>14 document an e-mail that you wrote on September</p> <p>15 21st to Martin Kelly c.c.'ing James Walker you</p> <p>16 write, "Martin, a basic question but want to</p> <p>17 make sure I'm understanding this summary.</p> <p>18 Will the 44.880 correspond to what came across</p> <p>19 against the repo - you mention and additional</p> <p>20 \$1.9 billion of assets (separate to the</p> <p>21 15(c)(3)) which is included/excluded in this</p> <p>22 number...?"</p> <p>23 Do you see that?</p> <p>24 A. Yeah.</p> <p>25 Q. First of all, is correct that the</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 \$44,880,000 refers to 44.8 billion?</p> <p>3 A. Yes.</p> <p>4 Q. And then the response you got from</p> <p>5 Martin Kelly says includes the 1.9 billion.</p> <p>6 Do you see that?</p> <p>7 A. Yeah.</p> <p>8 Q. And then it says "Robert can</p> <p>9 bridge it for you."</p> <p>10 Is Robert Robert Azerad?</p> <p>11 A. Yes.</p> <p>12 Q. And do you know what he meant by</p> <p>13 bridge it for you?</p> <p>14 A. What I was looking at here was</p> <p>15 some early information as to what securities</p> <p>16 were being -- was being included in best</p> <p>17 estimate of the balance sheet on the 22nd of</p> <p>18 September included an amount of \$44.88 billion</p> <p>19 and I was trying to understand what that</p> <p>20 represented. Specifically I was trying to</p> <p>21 understand whether it represented only assets</p> <p>22 which came across against the reverse repo or</p> <p>23 whether it also included assets that we were</p> <p>24 expecting to receive from LBI clearance boxes.</p> <p>25 The response from -- the numbers</p>

Page 218

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 as you say were provisional values based on
3 what information I can't recall, but using
4 them as shorthand for the two items, the
5 question is whether the 1.9 billion which was
6 the number which was being mentioned to
7 represent assets coming across from the
8 clearance boxes, whether that was included in
9 the 44.88.
10 Martin's response indicated that
11 it was and that Robert would be able to
12 reconcile for me either to split the 44.88
13 into what amount represented assets against
14 the repo and what amount represented assets
15 from the clearance box.
16 This issue continued to be
17 investigated over the coming days and weeks
18 and it was clear that the initial view
19 represented by Martin then was not entirely
20 accurate and that we had not received all
21 assets from the clearance boxes which is still
22 the case today.
23 Q. To your knowledge, is any of the
24 \$1.9 billion included in that 44.88?
25 A. Yes.

Page 220

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 included in the repo transaction?
3 A. I'm not specifically aware of how
4 these securities were transferred to Barclays.
5 Moving forward the important thing for me was
6 identifying what assets had been received by
7 Barclays. It was of far lesser importance
8 from my point of view in putting together the
9 acquisition balance sheet as to whether they'd
10 been transferred against the repo or against
11 the clearance boxes for that part of the
12 exercise.
13 The main thing I was trying to do
14 here was to ensure that I wasn't double
15 counting anything and conversely that I wasn't
16 missing anything and, therefore, that when we
17 moved forward to try to accurately value the
18 assets which had been received that we were
19 working on the correct population.
20 Q. Okay. So some of the \$1.9 billion
21 in clearance box assets were transferred
22 before this e-mail -- those were transferred
23 on Friday, September 19th; is that right?
24 A. I'm not sure of the date.
25 Q. Okay. Just so I understand, is it

Page 219

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. How much?
3 A. I don't know.
4 Q. Is the portion that's already
5 been -- of the \$1.9 billion that's already
6 been transferred to Barclays, was that
7 included?
8 A. Sorry.
9 Q. I should rephrase that.
10 When you're saying that some of
11 the \$1.9 billion was included in the 44.88
12 billion are you referring to the clearance box
13 assets that had already been transferred to
14 Barclays?
15 A. Yes.
16 Q. Okay. So the 44.88 billion
17 represents assets that had been transferred at
18 that time as opposed to purchase assets
19 generally?
20 A. I don't know what the 44.88
21 billion number itself represented. But the
22 purpose of my question was to try to ascertain
23 that.
24 Q. So some of the \$1.9 billion of
25 clearance box assets -- was some of that

Page 221

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 your testimony you don't know whether or not
3 any such transfers of clearance box assets
4 were also part of the repo transaction?
5 A. I don't know. No, I don't have a
6 huge amount of detailed knowledge in terms of
7 the precise mechanics by which the assets were
8 transferred.
9 Q. Do you know who might be able to
10 tell us that?
11 MR. SHAW: Any of the previous
12 witnesses who testified about it
13 including on the 30(b)(6) level.
14 MR. WOOD: I'm not sure that the
15 testimony is all consistent. So that's
16 why I'm looking for additional names.
17 Q. But if you don't know any that's
18 fine.
19 A. No. I don't know anybody in
20 particular.
21 (Deposition Exhibit 406A, document
22 bearing production numbers
23 BCI-EX-(S)-00052709 through
24 BCI-EX-(S)-00052710, marked for
25 identification as of this date.)

Page 222	Page 223
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. WOOD:</p> <p>3 Q. Mr. Romain, I've handed you what's</p> <p>4 been marked as Exhibit 406A. It's a</p> <p>5 two-page -- or in the version you have</p> <p>6 one-page double-sided -- e-mail chain. At the</p> <p>7 top of the first page, the most recent e-mail</p> <p>8 is from you to Stephen King c.c.'ing Jasen</p> <p>9 Yang on Tuesday, September 23rd. The subject</p> <p>10 line for all three of the e-mails is</p> <p>11 Valuation/opening balance sheet.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Looking at the bottom of page 1,</p> <p>15 so the earliest e-mail chronologically -- do</p> <p>16 you need a minute to look it over or are you</p> <p>17 ready?</p> <p>18 A. I've just read it.</p> <p>19 Q. Okay. The earliest</p> <p>20 chronologically of these e-mails where you</p> <p>21 write, "On Tuesday September 23rd at 11:05</p> <p>22 a.m. Jasen..." and in the first paragraph</p> <p>23 there's a reference to the \$44.8 billion and</p> <p>24 so then the last line of that paragraph says,</p> <p>25 "However, this valuation does not yet</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 attribute any value to the 1.9 billion that</p> <p>3 came across from the Lehman box rather than as</p> <p>4 repo collateral. Is that all correct?"</p> <p>5 A. Yeah.</p> <p>6 Q. What did you mean by that?</p> <p>7 A. Again, that was an early part of</p> <p>8 the process by which I was trying to assess</p> <p>9 what the appropriate -- what the appropriate</p> <p>10 view of the value of the assets that had come</p> <p>11 across at that time based on the information</p> <p>12 at that time. I had two sources of</p> <p>13 information, neither of which at that stage I</p> <p>14 particularly understood fully and I was trying</p> <p>15 to go between the two. So Patrick, which was</p> <p>16 Patrick Clackson, had mentioned to me a</p> <p>17 current view of the valuation of the Long</p> <p>18 Island acquired assets from the front office</p> <p>19 meaning Jasen and Stephen which was</p> <p>20 42.9 billion plus 300 million which came</p> <p>21 across as cash. And that this corresponded to</p> <p>22 the same assets as the 44.8 billion number</p> <p>23 that was referred to in our conversation</p> <p>24 around my e-mail to Martin Kelly.</p> <p>25 What I was trying to do here was</p>
Page 224	Page 225
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 work out was I comparing like with like so was</p> <p>3 this -- were both numbers either including or</p> <p>4 excluding assets from the clearance box.</p> <p>5 And -- yes, actually, that was the</p> <p>6 main thing I was trying to ascertain from</p> <p>7 Jasen.</p> <p>8 And then I started moving on to</p> <p>9 get a sense from them whether the 42.9 and 300</p> <p>10 million were indeed their best estimates of</p> <p>11 fair value of those assets on that date.</p> <p>12 Q. Mr. Romain, I'm handing you the</p> <p>13 first several pages of what's been marked 85B.</p> <p>14 I'd be happy to get the lengthier version</p> <p>15 which has longer attachments if you'd like or</p> <p>16 if we end up getting into that.</p> <p>17 But if you could look first at</p> <p>18 the -- there's an e-mail chain and then</p> <p>19 attached to it there's a page where it says</p> <p>20 page 1 at the bottom entitled Lehman</p> <p>21 Brothers/Barclays Capital APA Lead Sheet. And</p> <p>22 the actual exhibit in full has numerous pages</p> <p>23 showing what went into that. But before we</p> <p>24 get into that I just want to find out are you</p> <p>25 familiar with this document at all?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. To your knowledge you've never</p> <p>4 seen it before?</p> <p>5 A. To my knowledge I've never seen</p> <p>6 it, no.</p> <p>7 Q. Okay. In that case I won't spend</p> <p>8 any further time on it.</p> <p>9 I'm handing you a one-page</p> <p>10 document that's previously been marked as</p> <p>11 Exhibit 374A. It's a very short e-mail from</p> <p>12 Patrick Clackson to you on Tuesday, September</p> <p>13 23rd. Subject BS. It says "Box securities</p> <p>14 worth 1.5 and exchange traded zero and may be</p> <p>15 some upside - may need a provision."</p> <p>16 Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. First of all, what do you</p> <p>19 understand Mr. Clackson to mean by box</p> <p>20 securities worth 1.5?</p> <p>21 A. Without a context sitting here</p> <p>22 right now I don't recall.</p> <p>23 Q. Do you think that's a different</p> <p>24 valuation of the 1.9 billion in securities we</p> <p>25 were previously discussing?</p>

Page 226

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 MR. SHAW: Objection. Calls for
3 speculation.
4 A. I don't know.
5 Q. And then he wrote exchange traded
6 zero. What did you understand him to mean by
7 that?
8 A. Again, without the context of
9 being there at the time and recalling the
10 conversation I was having with help me at that
11 time I don't know.
12 Q. Do you recall what you understood
13 him to mean by may be some upside?
14 A. No.
15 Q. Do you recall what you understood
16 him to mean by may need a provision?
17 A. No.
18 (Deposition Exhibit 401A, document
19 bearing production number
20 BCI-EX-(S)-00052419 with attachment,
21 marked for identification as of this
22 date.)
23 BY MR. WOOD:
24 Q. Mr. Romain, I'm handing you what's
25 been marked as Exhibit 407A. As you see it's

Page 228

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 maybe a third of the way down the page, you'll
3 see Assets in Fed box (net of \$.9 billion
4 writedown).
5 A. Yeah.
6 Q. What does the Fed box refer to?
7 A. I don't recall.
8 Q. Do you think that was the
9 clearance box at DTC?
10 A. I don't know.
11 Q. Okay. Do you know why there was a
12 \$.9 billion writedown?
13 A. No. I don't know.
14 Q. Did you create this document?
15 A. Yes.
16 Q. Do you see margin held to secure
17 derivatives anywhere on this sheet?
18 A. Those words don't appear, no.
19 Q. That's all I have for that
20 document.
21 (Deposition Exhibit 408A, document
22 bearing production number
23 BCI-EX-(S)-00052859, marked for
24 identification as of this date.)
25

Page 227

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 a one-page e-mail with a one-page attachment.
3 A. Yeah.
4 Q. The e-mail is -- it's Bates
5 numbers ending in 52419. I don't see any
6 Bates numbers on the attachment but it's our
7 understanding that these were produced
8 together.
9 Looking at it can you tell whether
10 or not that attachment was, in fact, the
11 attachment to the e-mail?
12 A. I can't tell.
13 Q. Okay. In your September 20th
14 e-mail to James Walker and several other
15 people you write, "James, Please find attached
16 a completion balance sheet based on the APA as
17 amended plus the clarification letter (and our
18 conversation with Patrick)."
19 Just looking at the attachment
20 does that appear to be a completion balance
21 sheet?
22 A. Yes, yes. A completion balance
23 sheet being another term which has been used
24 for acquisition balance sheet.
25 Q. If you look along the left about

Page 229

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 BY MR. WOOD:
3 Q. Mr. Romain, I'm handing you what's
4 been marked as Exhibit 408A. It's a one-page
5 e-mail chain -- actually, just a single e-mail
6 I should say. Bates Numbers ending in 52859.
7 It's an e-mail from you to Patrick Clackson
8 c.c.'ing several people on Thursday, September
9 25th. The subject is Acquisition balance
10 sheet - areas of uncertainty.
11 You write, "Patrick, As requested
12 remaining uncertainties on the acquisition
13 balance sheet." And then you have the heading
14 Operational. The second bullet there is
15 \$1.9 billion assets from LBI box not yet
16 received.
17 Then you have a little asterisk at
18 the bottom. There's a note that says that
19 means As of this morning we need to catch up
20 with Marcus/Phil.
21 As of September 25th had any of
22 those \$1.9 billion in assets from the box been
23 transferred to Barclays?
24 MR. SHAW: Asked and answered.
25 A. I believe the answer was yes.

Page 230	Page 231
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Some had.</p> <p>3 A. I believe the answer was yes, yes.</p> <p>4 Q. But you don't recall how much; is</p> <p>5 that correct?</p> <p>6 A. No, I don't recall how much, no.</p> <p>7 Q. The next line is 15(c)(3)</p> <p>8 asset - asset to be finalized/received.</p> <p>9 What needed to be finalized?</p> <p>10 A. I don't have an accurate</p> <p>11 recollection as to what my level of knowledge</p> <p>12 or understanding of that item was on the 25th</p> <p>13 of September.</p> <p>14 Q. Do you recall whether finalized</p> <p>15 referred to the need to make a final</p> <p>16 calculation of any excess beyond the 15(c)(3)</p> <p>17 lockup requirement?</p> <p>18 MR. SHAW: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. No. I don't recall.</p> <p>21 Q. Do you recall whether finalized</p> <p>22 referred to any need to get regulatory</p> <p>23 approval from any government agencies?</p> <p>24 MR. SHAW: Objection. Asked and</p> <p>25 answered.</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. No, I don't recall.</p> <p>3 Q. The next line is exchange traded</p> <p>4 options - uncertainty around this population</p> <p>5 and its valuation.</p> <p>6 Do you know what you meant by the</p> <p>7 uncertainty?</p> <p>8 A. I don't know precisely what I</p> <p>9 meant in terms of what the nature of my</p> <p>10 uncertainty was at that point in time but I</p> <p>11 would say that it was certainly in the context</p> <p>12 of a significant degree of uncertainty on my</p> <p>13 part as to that as well as many other items at</p> <p>14 that stage. So it doesn't surprise me that I</p> <p>15 was representing there as being uncertainty</p> <p>16 from my perspective at that date.</p> <p>17 Q. Okay.</p> <p>18 (Deposition Exhibit 409A, document</p> <p>19 bearing production number</p> <p>20 BCI-EX-(S)-00052876, marked for</p> <p>21 identification as of this date.)</p> <p>22 BY MR. WOOD:</p> <p>23 Q. I've handed you what's been marked</p> <p>24 as Exhibit 409A. It's a single page of</p> <p>25 e-mails containing three e-mails all dated</p>
Page 232	Page 233
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 Friday, September 26th. Bates number at the</p> <p>3 bottom of the page ends in 52876. Subject is</p> <p>4 1.9 free collateral. As you'll see there's --</p> <p>5 the earliest chronologically is from Stephen</p> <p>6 King to Patrick Clackson and James Walker.</p> <p>7 Looks like Mr. Clackson then forwarded the</p> <p>8 e-mail onto you without any comment later that</p> <p>9 day and you forward it on to Philip Nash,</p> <p>10 Marcus Morton, and Charles Utley also without</p> <p>11 any comment.</p> <p>12 Mr. King wrote in the earliest</p> <p>13 e-mail "The file containing the extra 1.9</p> <p>14 billion has not been delivered and can't be</p> <p>15 right because it contains some bonds which are</p> <p>16 already in the BarCap repo."</p> <p>17 What did you understand him to</p> <p>18 mean by contains some bonds which are in the</p> <p>19 BarCap repo?</p> <p>20 A. I'm not sure.</p> <p>21 Q. He continued, "Therefore the 1.5</p> <p>22 est as the value of the 1.9 cannot be relied</p> <p>23 upon."</p> <p>24 What did you understand him to</p> <p>25 mean by that sentence?</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm not sure exactly what he</p> <p>3 meant, no. No, I'm not sure.</p> <p>4 (Deposition Exhibit 410A, document</p> <p>5 bearing production numbers</p> <p>6 BCI-EX-(S)-00052909 through</p> <p>7 BCI-EX-(S)-00052911, marked for</p> <p>8 identification as of this date.)</p> <p>9 BY MR. WOOD:</p> <p>10 Q. Mr. Romain, I've handed you what's</p> <p>11 been marked as Exhibit 410A, a three-page</p> <p>12 e-mail string. It appears that they are all</p> <p>13 dated Friday, September 26th. Subject is</p> <p>14 15(c)(3). Feel free to take a moment to look</p> <p>15 that over.</p> <p>16 (Document review.)</p> <p>17 Q. Okay. And the earliest of this</p> <p>18 e-mail is from you to Marty Kelly, Friday,</p> <p>19 September 26th. You wrote, "So was wondering</p> <p>20 if the 15(c)(3) number/process had been</p> <p>21 resolved...thanks, Gary."</p> <p>22 What did you mean if the 15(c)(3)</p> <p>23 number/process had been resolved?</p> <p>24 A. The 15(c)(3) was one of the items</p> <p>25 on the Barclays balance sheet at that time and</p>

Page 234

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 it was item which I had particularly little
3 knowledge or understanding about. So what I
4 was getting at with the question to Martin was
5 whether he could help me to understand what
6 the status of that number was and explain to
7 me in a little more detail what the item
8 represented which he then partially did.
9 Q. So his answer that same day begins
10 with "Not resolved - it still appears that
11 there is plenty of cushion in the reserve but
12 I cannot estimate the timing of the release of
13 that cushion."
14 What was the significance of the
15 cushion in the reserve?
16 A. I'm not sure. I don't have a
17 great understanding of the way that 15(c)(3)
18 rules work. So at that time it would have
19 been -- at that time the message I would have
20 gotten out of Martin's e-mail was principally
21 that there was more I needed to understand
22 before I had any certainty as to what that
23 item represented.
24 Q. And then number 4 of that same
25 e-mail he writes -- it's on the next page.

Page 236

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 You still don't remember whether
3 you spoke to him?
4 A. No.
5 (Deposition Exhibit 411A, document
6 bearing production numbers
7 BCI-EX-(S)-00052978 through
8 BCI-EX-(S)-00052981, marked for
9 identification as of this date.)
10 BY MR. WOOD:
11 Q. Mr. Romain, I've handed you
12 Exhibit 411A, a four-page e-mail string.
13 Bates numbers ending in 52978 to 52981.
14 The dates on the various e-mails
15 appear to be Sunday, September 28th, and
16 Monday, September 2003. Subject is Current
17 position reconciliation. Go ahead and take a
18 moment to look that over.
19 (Document review.)
20 A. Okay.
21 Q. At the very bottom of the first
22 page you'll see there's a From: Marcus Morton
23 dated September 29th, 2008.
24 A. Um-hum.
25 Q. To you c.c.'ing Charles Utley.

Page 235

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 "For the SEC to allow us to release cash from
3 the reserve formula," it's misspelled there,
4 "we need to prepare a reserve requirement of
5 accounts staying at LBI versus going to BCI -
6 until our operations group catches up on
7 booking trades and clearing fails we cannot
8 prepare that schedule."
9 So based on his response to your
10 inquiry what action, if any, did you take
11 regarding the acquisition balance sheet you
12 were working on?
13 A. I don't recall.
14 Q. Then in your response back to him
15 starts off, "Martin, thanks. More moving
16 parts than I appreciated!"
17 Then you say later in that e-mail
18 "It would be good to walk through the current
19 situation on the phone if you have a minute."
20 Do you recall if you talked to him
21 on the phone?
22 A. I don't recall, no.
23 Q. And then you'll see up above he
24 writes, "Sure. I'll call you Monday. Hope
25 you get some time out."

Page 237

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 And it starts out, "Just a quick explain.
3 Apparently the 1.9 was partly delivered on
4 Thursday, part on Friday."
5 Now, this is dated September 29th
6 but do you know whether the Thursday and
7 Friday referred to there are September 18th
8 and 19th or September 25th and 26th?
9 A. I don't know. My understanding is
10 it would be the 18th and 19th.
11 Q. And what do you base that on?
12 A. It's only speculation really. I
13 don't know.
14 Q. Are you inferring that just from
15 the context of the e-mail or do you have a
16 recollection that there were transfers on the
17 18th and 19th but not on the 25th or 26th?
18 A. I'm not sure whether there were
19 transfers on the 25th and 26th. I know there
20 were transfers of some assets on the 18th and
21 19th but I shouldn't say that there weren't on
22 the 25th and 26th. I'm not sure.
23 Q. At the very end of that same
24 paragraph Mr. Morton writes, "An early
25 estimate is around 1 to \$1.2 billion more than

Page 238

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 original balance but with some securities
3 still unpriced."
4 Do you know what he meant by that?
5 A. I'm not sure what I was basing
6 that on, no. This was the process whereby we
7 were trying to get the handle on what we'd
8 received, reconcile the balance, and then
9 enable us to start valuing. And what I take
10 from that e-mail is as of that date, that
11 process was far from complete and there was
12 evidently a lack of certainty as to what we'd
13 received and what it was worth at that time.
14 Q. And then you replied to him. And
15 then he wrote back, this is on September 29th
16 at 16:28. The second line of it is "Also we
17 just received a further \$200 million in
18 collateral today!"
19 MR. SHAW: Objection to form. 250
20 million.
21 MR. WOOD: I'm sorry. Did I say
22 something else?
23 MR. SHAW: You said 200.
24 MR. WOOD: Oh, thank you.
25 Q. "It was 250 million in collateral

Page 240

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Q. You replied and then at the top of
3 this page Marcus Morton writes, "Apparently
4 the 250 is more collateral that has been freed
5 up at DTC which they had sent to us."
6 Do you know what that refers to?
7 A. No.
8 Q. Then he continues, "They're also
9 looking at their other account at DTC to see
10 if there is more. Not quite sure how to
11 handle this and not on the list agreed with
12 LEH and the lawyers of what we should
13 receive."
14 Do you know whether that list
15 refers to Schedule B?
16 A. No. I'm not sure what he was
17 referring to.
18 Q. Did you ask him what he was
19 referring to?
20 A. I don't recall.
21 Q. Do you know why Barclays was
22 getting assets that were not on the list
23 agreed with LEH and the lawyers?
24 MR. SHAW: Objection to form.
25 Assumes facts not in evidence.

Page 239

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 today!"
3 Do you know what that 250 million
4 in collateral was?
5 A. No.
6 Q. The next paragraph says "Also
7 Rodefeld was saying that we received 300
8 million in cash as part of the collateral."
9 Do you know what that 300 million
10 in cash was?
11 A. I'm aware that when we received
12 assets that one of the assets we received was
13 300 million in cash against the repo.
14 Q. So the 300 million in cash was
15 part of the repo transaction?
16 A. 300 million was an asset that was
17 received by Barclays at around the time of the
18 repo in terms of the precise relationship of
19 the asset to the repo. I'm no expert in that
20 but it was received and was one of the assets
21 which was included in the acquisition balance
22 sheet on that basis.
23 Q. Do you know whether that was from
24 LBI's clearance boxes at DTC?
25 A. I don't know, no.

Page 241

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 A. I don't know whether that was the
3 case. And I don't know -- I don't have a
4 great deal of knowledge about the precise
5 mechanics by which the assets were transferred
6 to Barclays. I would say that this was more
7 ensuring that the assets that we received were
8 credited to the accounts.
9 Q. Mr. Romain, I just want to take
10 you back to something we discussed earlier.
11 When I was asking about Exhibits 399A and 404A
12 which you're welcome to take a look at but you
13 may be able to answer without them, we
14 discussed several types of collateral that you
15 said were held for affiliates of LBI but not
16 for LBI itself.
17 Do you recall that?
18 A. They were posted to exchanges in
19 which LBI affiliates had the exchange
20 membership. That relates to LBI customers.
21 Q. Okay. So on, for example,
22 Exhibit 404A, at the bottom where we had the
23 Lehman entities, and those are non-LBI
24 affiliates, correct?
25 A. Yeah, they are -- yeah, other

Page 242

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Lehman entities, yes.
3 Q. But this margin relates to
4 derivatives held by LBI customers?
5 A. Yeah. It relates to -- it's
6 collateral that relates to customer accounts
7 that we took on but related to derivatives
8 which traded on exchanges which other Lehman
9 entities held the exchange membership for.
10 Q. So at the bottom of 404A there's a
11 line that says Totals Not Received and it says
12 95 million. Is that correct?
13 A. It says 95 in Treasury bills and
14 then there's 289 million which I believe is
15 held just in currency. I'm not sure for -- in
16 terms of the form that's held in but they are
17 both items of margin which are held in
18 exchanges related to those.
19 Q. Does the "not received" refer to
20 both of those numbers, both the 289 million
21 and change and the 95 million?
22 A. It's my understanding that it
23 does.
24 Q. And what's your -- looks like a
25 handwritten note that says less 169 million.

Page 244

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 Exhibit 399A.
3 A. Sure.
4 Q. Are those numbers that we were
5 just talking about, the 289 million plus and
6 the 95 million reflected in your handwritten
7 notes here?
8 A. Yes. They're included in the 460.
9 Q. What else is in the 460?
10 A. The main item is prop collateral I
11 believe which is included in the other
12 schedule.
13 Q. So it's Exhibit 405A.
14 A. Yes.
15 Q. And just to be clear, when you say
16 prop collateral you're referring to
17 proprietary collateral?
18 A. Yes.
19 Q. And so what from Exhibit 405A is
20 included to get you to the 460?
21 A. I don't have a reconciliation in
22 front of me but if you give me a second I
23 should be able to check.
24 (Document review.)
25 Q. Before you answer that can I just

Page 243

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 And it says something else after that. I
3 can't read that.
4 A. Provision.
5 Q. What does that mean?
6 A. That means that we didn't
7 recognize the entire amount on the financial
8 reporting purposes because based on our level
9 of knowledge around the balance when we
10 published our financial statements we hadn't
11 done enough work to feel comfortable doing so.
12 But it has nothing to do with the status of
13 your claims to the assets.
14 Q. And is Barclay claiming those
15 assets?
16 A. Yes.
17 Q. That's both the 289 million and
18 change and the 95 million?
19 A. Yes. They're both included in the
20 amounts we're claiming.
21 Q. And, to your knowledge, Barclays
22 has not received any of those?
23 A. To my knowledge, we haven't
24 received any of them.
25 Q. If you would look for a moment at

Page 245

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 ask you another question and we can come back
3 to that?
4 A. Sure.
5 Q. At the top of 405A it says Lehman
6 Brothers Inc. Proprietary Futures.
7 A. Yes.
8 Q. So that's all LBI, correct?
9 A. So I'm not sure I understand the
10 question.
11 Q. So I guess I'm a little puzzled as
12 to why anything from 405A would go under
13 future collateral and affiliates.
14 A. All of the top proprietary -- in a
15 sense it's a proprietary position of LBI. But
16 it's held -- it's a position for which the
17 exchange membership is held by another
18 affiliate. So the position was held by the
19 affiliate.
20 Q. Okay. Got it.
21 Okay. So, sorry. Back to my
22 question if you still have it in mind.
23 A. I think it's just the 272 and 169.
24 So I'm not entirely sure where the 95 in
25 Treasury bill feeds in to the list on the

Page 246	Page 247
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 front of 399A. 3 Q. So at the bottom of 405A where 4 you've got your handwritten notes and you've 5 got the 210, 4 unrecognized, and the 272 6 affiliates not recognized. 7 A. Yeah. 8 Q. Is it correct that Barclays is 9 seeking both the 210 and the 272? 10 A. That's correct. 11 Q. And I think you told me this 12 earlier so I apologize if I ask again, but it 13 is correct that the 210 has been transferred 14 to Barclays and the 272 has not? 15 A. I don't think any of that's been 16 transferred to Barclays. 17 Q. Oh, you don't think any of it has. 18 A. No. 19 Q. Okay. 20 A. I'm not positive about that. But 21 I don't think it has. 22 Yeah, my only concern with that is 23 I'm aware that sometime during 2009 an amount 24 was received from Macquarie. So it may be 25 that an element of the Macquarie amount may</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 have been received. But the thing I'm not 3 sure about is whether the amount received from 4 Macquarie is part of the amount on 405A or 5 whether it's part of the amount on 404A. 6 Q. Meaning it could have been either 7 proprietary or on behalf of customers and you 8 don't recall? 9 A. That's correct. 10 Q. Okay. 11 MR. SHAW: Good time for a break? 12 MR. WOOD: Yes. I might be 13 finished so we could take a break. 14 (Recess taken.) 15 MR. WOOD: I have nothing further. 16 THE WITNESS: That was quick. 17 MR. SHAW: I have a couple quick 18 ones. 19 * * * 20 EXAMINATION BY 21 MR. SHAW: 22 Q. First of all, you testified a 23 little bit earlier today about delivery of 24 certain cash from some accounts. And did you 25 wish to offer a clarification on your</p>
Page 248	Page 249
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 testimony on that issue? 3 A. Yeah. Yeah. If I can find the 4 appropriate -- 5 Q. Which exhibit are you looking for? 6 A. Sorry. Exhibit 399A. We were 7 talking about the list of the OCC collateral, 8 cash, governments, less some credits. And one 9 of the questions which came up was whether to 10 my knowledge the cash had been received and I 11 offered that I believe that substantially all 12 of it had been received and that answer is 13 accurate. Substantially all -- my 14 recollection is that substantially all of the 15 cash item on that page has been received. 16 However, to the extent that any of 17 the government securities may have matured 18 into cash or the extent to which any letters 19 of credit may have been drawn down and 20 represent cash I'm not aware of any cash which 21 may have resulted from those two items had 22 been received. So just to be -- just to make 23 sure I'm being completely clear. 24 Q. Another issue that you discussed 25 earlier today was the question of when</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL 2 Barclays believes the -- strike that. 3 Another issue you discussed 4 earlier today was the issue of when the margin 5 collateral entered the deal. Do you want to 6 offer any clarification on your testimony on 7 that issue? 8 A. Sure. To amplify the response 9 from earlier, the collateral entered the deal 10 in the APA. The clarification letter was 11 exactly that, a clarification. And that's 12 related to the reason I spoke about earlier 13 that in our view it's not -- it's not 14 meaningful to think about positions and 15 collateral separately due to their nature. 16 And for that reason our view is that the 17 collateral went to the deal in the APA. 18 Q. And when you say it's not 19 meaningful to think about collateral 20 separately from the positions, what do you 21 mean by that? 22 A. The positions are daily margins, 23 derivatives, and to have a full understanding 24 of the position you need to look at the 25 close-out value of the derivative as well as</p>

Page 250	Page 251
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 the cumulative initial and variation margin</p> <p>3 which had been posted before that date. It's</p> <p>4 only by being those two together that you get</p> <p>5 a representation of the position. And that's</p> <p>6 the underlying reasoning why. But to be clear</p> <p>7 the collateral went into the deal into the</p> <p>8 APA.</p> <p>9 Q. Just so that we're completely</p> <p>10 clear on this, you do not have any personal</p> <p>11 knowledge of the terms of the deal or the</p> <p>12 issue of when Barclays acquired the right to</p> <p>13 the collateral. That's simply the result of</p> <p>14 the investigation you conducted which was set</p> <p>15 forth in your handwritten notes, Exhibit 399A;</p> <p>16 is that right?</p> <p>17 A. That's absolutely correct.</p> <p>18 MR. SHAW: Okay. I have no</p> <p>19 further questions.</p> <p>20 MR. WOOD: I have just one.</p> <p>21 * * *</p> <p>22 EXAMINATION BY</p> <p>23 MR. WOOD:</p> <p>24 Q. Just to make sure I understand you</p> <p>25 correctly, when you say that the margin or</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 collateral was included in the APA even before</p> <p>3 the clarification letter, you're relying on</p> <p>4 the inclusion of exchange traded derivatives</p> <p>5 under the definition of purchase assets?</p> <p>6 A. I'm relying on my discussions with</p> <p>7 officers of Barclays in relation to preparing</p> <p>8 for this deposition and that's Barclays' view</p> <p>9 that I came to as a result of those</p> <p>10 conversations.</p> <p>11 Q. Do you know what provision of the</p> <p>12 Asset Purchase Agreement that's based on?</p> <p>13 A. I wouldn't want to talk to the</p> <p>14 term-by-term assessments at this time. But</p> <p>15 I'll just repeat that it's the position and</p> <p>16 understanding I came to from those</p> <p>17 discussions.</p> <p>18 Q. So then leaving aside for right</p> <p>19 now the term-by-term assessments as you</p> <p>20 referred to it, more generally is it your view</p> <p>21 that collateral and margin were included in</p> <p>22 the APA because exchange traded derivatives</p> <p>23 were included?</p> <p>24 A. It's my understanding that they</p> <p>25 were included in the deal. Without wanting to</p>
Page 252	Page 253
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 to talk to the individual items of term and</p> <p>3 logic which led to that conclusion, that is --</p> <p>4 yeah, that's the understanding that I've come</p> <p>5 to.</p> <p>6 Q. Are you aware of any other</p> <p>7 provisions in the Asset Purchase Agreement</p> <p>8 other than the inclusion of exchange traded</p> <p>9 derivatives under the definition of purchase</p> <p>10 assets that could possibly be interpreted to</p> <p>11 convey the margin and collateral to Barclays?</p> <p>12 MR. SHAW: Objection. Calls for a</p> <p>13 legal conclusion. Foundation.</p> <p>14 A. I wouldn't want to speculate on</p> <p>15 the sum total of the possible ways of</p> <p>16 interpreting each sentence in the document</p> <p>17 which I'd need to do to be able to accurately</p> <p>18 state that there's no way of interpreting any</p> <p>19 other clause in that manner.</p> <p>20 Q. But as you're sitting here today</p> <p>21 are you aware of any other provisions?</p> <p>22 A. As I'm sitting here today, I am</p> <p>23 not basing my assessment on a term-by-term</p> <p>24 assessment of which terms within that document</p> <p>25 lead to the conclusion. But based on</p>	<p>1 conversations I've had as to Barclays' view of</p> <p>2 the deal which resulted from the Asset</p> <p>3 Purchase Agreement.</p> <p>4 MR. WOOD: I have nothing further.</p> <p>5 MR. SHAW: Okay. I don't have any</p> <p>6 further questions.</p> <p>7 MR. WOOD: Great, Mr. Romain.</p> <p>8 Thank you very much for your time.</p> <p>9 (Time Noted: 5:21 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 GARY ROMAIN</p> <p>21</p> <p>22 Subscribed and sworn to before me</p> <p>23 this ____ day of _____, 2009.</p> <p>24</p> <p>25</p>

Page 254

1
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF NEW YORK)
6 I, FRANCIS X. FREDERICK, a Notary
7 Public within and for the State of New
8 York, do hereby certify:
9 That GARY ROMAIN, the witness
10 whose deposition is hereinbefore set
11 forth, was duly sworn by me and that
12 such deposition is a true record of the
13 testimony given by the witness.
14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or marriage, and that I
17 am in no way interested in the outcome
18 of this matter.
19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 10th day of
21 September, 2009.
22
23
24 FRANCIS X. FREDERICK
25

Page 256

1
2 ----- EXHIBITS -----
3 EXHIBIT FOR ID.
4 Exhibit 388A
5 Document bearing production
6 numbers BCI-EX-(S)-000520127
7 with attachment..... 20
8 Exhibit 389A
9 document bearing production
10 number BCI-EX-(S)-00052084..... 23
11 Exhibit 390A
12 document bearing production
13 numbers BCI-EX-(S)-00023761
14 through BCI-EX-(S)-00023762
15 with attachment..... 28
16 Exhibit 391A
17 document bearing production
18 numbers BCI-EX-001766522
19 through BCI-EX-001766536..... 33
20 Exhibit 392A
21 document bearing production
22 numbers Exhibit 392A
23 document bearing production
24 numbers BCI-EX-(S)-00023813
25 through BCI-EX-(S)-00023814..... 38

Page 255

1
2 ----- INDEX -----
3 WITNESS EXAMINATION BY PAGE
4 GARY ROMAIN MR. TAMBE 5
5 MR. WOOD 154, 250
6 MR. SHAW 247
7
8 ----- INFORMATION REQUESTS -----
9 DIRECTIONS: NONE
10 RULINGS: NONE
11 TO BE FURNISHED: NONE
12 REQUESTS: NONE
13 MOTIONS: NONE
14
15
16
17
18
19
20
21
22
23
24
25

Page 257

1
2 ----- EXHIBITS -----
3 EXHIBIT FOR ID.
4 Exhibit 393A
5 document bearing production
6 numbers BCI-EX-(S)-00052197
7 through BCI-EX-(S)-00052198..... 45
8 Exhibit 394A
9 document bearing production
10 numbers BCI-EX-(S)-00052200
11 through BCI-EX-(S)-00052201..... 47
12 Exhibit 395A
13 document bearing production
14 numbers BCI-EX-(S)-00052268
15 through BCI-EX-(S)-00052270..... 49
16 Exhibit 396A
17 three-page document bearing
18 production numbers 464242..... 67
19 Exhibit 397A
20 document bearing production
21 numbers BCI-EX-(S)-00013605
22 through BCI-EX-(S)-00013606
23 with attachment..... 71
24
25

Page 258	Page 259
<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 398A 5 two-page document bearing 6 production number 44230..... 73 7 Exhibit 399A 8 handwritten notes..... 106 9 Exhibit 400A 10 document bearing production 11 numbers BCI-EX-(S)-00024451 12 through BCI-EX-(S)-00024455..... 122 13 Exhibit 401A 14 document bearing production 15 numbers BCI-EX-(S)-00052667 16 through BCI-EX-(S)-00052668 17 with attachment..... 126 18 Exhibit 402A 19 document bearing production 20 number BCI-EX-(S)-00052678..... 138 21 Exhibit 403A 22 document bearing production 23 numbers BCI-EX-(S)-00024689 24 through BCI-EX-(S)-00024690 25 with attachment..... 143</p>	<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 404A 5 balance sheet..... 165 6 Exhibit 405A 7 balance sheet..... 165 8 Exhibit 406A 9 document bearing production 10 numbers BCI-EX-(S)-00052709 11 through BCI-EX-(S)-00052710..... 221 12 Exhibit 401A 13 document bearing production 14 number BCI-EX-(S)-00052419 15 with attachment..... 226 16 Exhibit 408A 17 document bearing production 18 number BCI-EX-(S)-00052859..... 228 19 Exhibit 409A 20 document bearing production 21 number BCI-EX-(S)-00052876..... 231 22 Exhibit 410A 23 document bearing production 24 numbers BCI-EX-(S)-00052909 25 through BCI-EX-(S)-00052911..... 233</p>
Page 260	Page 261
<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 411A 5 document bearing production 6 numbers BCI-EX-(S)-00052978 7 through BCI-EX-(S)-00052981..... 236 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 NAME OF CASE: LEHMAN BROTHERS 3 DATE OF DEPOSITION: SEPTEMBER 10, 2009 4 NAME OF WITNESS: GARY ROMAIN 5 Reason codes: 6 1. To clarify the record. 7 2. To conform to the facts. 8 3. To correct transcription errors. 9 Page _____ Line _____ Reason _____ 10 From _____ to _____ 11 Page _____ Line _____ Reason _____ 12 From _____ to _____ 13 Page _____ Line _____ Reason _____ 14 From _____ to _____ 15 Page _____ Line _____ Reason _____ 16 From _____ to _____ 17 Page _____ Line _____ Reason _____ 18 From _____ to _____ 19 Page _____ Line _____ Reason _____ 20 From _____ to _____ 21 Page _____ Line _____ Reason _____ 22 From _____ to _____ 23 24 25 GARY ROMAIN</p>

BCI EXHIBIT

95

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----x

11
12 DEPOSITION OF GARY ROMAIN

13 New York, New York

14 January 13, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 27082

Page 2	Page 4
<p>1 2 3 4 5 January 13, 2010 6 10:15 a.m. 7 8 Deposition of GARY ROMAIN, held at the 9 offices of Hughes, Hubbard & Reed, LLP, One 10 Battery Park Plaza, New York, New York, before 11 Mary F. Bowman, a Registered Professional 12 Reporter, Certified Realtime Reporter, and 13 Notary Public of the State of New York and New 14 Jersey. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: WILLIAM R. MAGUIRE, ESQ. 9 NEIL OXFORD, ESQ. 10 AMINA HASSAN, ESQ. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5
<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: JAYANT TAMBE, ESQ.- 9 KELLY CARRERO, ESQ. 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays and The Witness 13 5301 Wisconsin Avenue, NW 14 Washington, DC 20015 15 BY: HAMISH HUME, ESQ. 16 17 18 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 19 Attorneys for the Creditors Committee 20 51 Madison Avenue 21 New York, New York 10010 22 BY: ERIC KAY, ESQ. 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

Page 6

1 ROMAIN
2 (Exhibit 533A, document Bates stamped
3 BCI-EX-295932 through 33 marked for
4 identification, as of this date.)
5 (Exhibit 534A, notes entitled
6 "Preparation Notes for January 13
7 Deposition" marked for identification, as of
8 this date.)
9 GARY ROMAIN,
10 called as a witness by the parties,
11 having been duly sworn, testified as follows:
12 EXAMINATION BY
13 MR. MAGUIRE:
14 Q. Good morning, Mr. Romain.
15 A. Morning.
16 Q. My name, as you know, is Bill Maguire.
17 I will be asking you some questions today. If
18 you need to take a break at any time, let me
19 know and we will find a convenient time to take
20 a break. Is that OK?
21 A. That's fine.
22 Q. I will try to make my questions clear.
23 I may not always succeed. If you are in any
24 doubt, let me know and I will try to clear up
25 the question.

Page 7

1 ROMAIN
2 A. OK.
3 Q. If you answer the question, we can
4 assume that you understand it; is that fair?
5 A. Yes.
6 Q. Sir, can you tell me briefly what you
7 did to prepare for today's deposition?
8 A. I went back over a number of documents
9 which related to the preparation of acquisition
10 balance sheets and other documents which I had
11 relating to other items which were mentioned in
12 the deposition notice.
13 I also talked to a number of
14 colleagues and I had discussions with counsel.
15 Q. And when did you do all that?
16 A. Over the last three, four weeks, I
17 guess.
18 Q. And the documents that you mentioned,
19 did you collect those documents together?
20 A. I had those stored electronically, so
21 I didn't move them. It was just a question of
22 refreshing my memory on some of them.
23 Q. Did you compile any collections of
24 documents, any binders or even electronic
25 collections of documents?

Page 8

1 ROMAIN
2 A. No.
3 Q. You mentioned that you spoke to some
4 people. Can you tell us who the people that you
5 spoke with were?
6 A. Yeah. I spoke with Eric Clark, Liz
7 James, Sean Teague, Lily McInerney, Craig Jones,
8 Dan Dziemian. Those are the main people.
9 Q. If during the course of the deposition
10 you remember anybody else, you can feel free to
11 tell us, OK?
12 A. Will do.
13 Q. When did you speak with Ms. James?
14 A. I spoke with her a couple of times
15 briefly and had a long conversation with her
16 yesterday.
17 Q. Can you tell us about the conversation
18 you had with her yesterday?
19 A. Sure. It was largely to talk about
20 some of the futures-related balances, to confirm
21 my understanding and confirm that that
22 understanding was consistent with hers and her
23 information.
24 Q. What was your understanding with
25 respect to the futures-related balances?

Page 9

1 ROMAIN
2 MR. HUME: Objection, vague.
3 Q. Well, I understand from your previous
4 answer that you needed to confirm or you wanted
5 to confirm your understanding by speaking with
6 her?
7 A. Sure.
8 Q. Can you tell me specifically what it
9 was that you wanted to confirm?
10 A. I'm trying to think what particular
11 points I covered. The main point we covered was
12 what margin and customer balances were
13 recognized on the balance sheet and what we had
14 received and what we hadn't received.
15 Q. Was this a phone call yesterday or was
16 it a meeting?
17 A. It was a phone call.
18 Q. Where was Ms. James, to the best of
19 your knowledge?
20 A. I believe that she was in her normal
21 place of work in New York. But I didn't
22 actually ask her.
23 Q. How long was the call with Ms. James?
24 A. It was approximately 20 to 30 minutes.
25 Q. And did anyone else participate

Page 10

1 ROMAIN
2 besides you and Ms. James?
3 A. Yes. Alan Kaplan participated and
4 Tricia Bloomer participated, and that was it.
5 Q. And when you say participated, they
6 were present on the call?
7 A. They were present on the call.
8 Q. Did they say anything on the call?
9 MR. HUME: Objection. To the extent
10 you are going to probe conversations with
11 counsel, which may have been intermingled
12 with the gathering of facts for this
13 30(b)(6) witness to report to you, I'm
14 objecting, as that is probing into work
15 product privilege, and instructing the
16 witness not to answer.
17 If you want to ask about specific
18 facts that the witness gathered, you can do
19 so obviously, and he has notes to reflect
20 the facts he has gathered.
21 Q. Let me break it down. Did
22 Mr. Kaplan -- you can answer this yes or no.
23 Did Mr. Kaplan say anything on the call?
24 A. Yes.
25 Q. Did he say anything with respect to

Page 11

1 ROMAIN
2 futures?
3 MR. HUME: Objection. Vague, and
4 again, I think it is calling for the witness
5 to report upon work product privileged
6 conversations with counsel, and instructing
7 him not to answer.
8 Q. Did Tricia Bloomer say anything on the
9 call?
10 MR. HUME: Same objection, same
11 instruction.
12 Q. Is Ms. Bloomer a lawyer?
13 MR. HUME: Yes.
14 A. Yes.
15 Q. Did you -- when you spoke with
16 Ms. James, did you have any document in front of
17 you?
18 A. Yes.
19 Q. And what was that?
20 A. I don't recall every document that I
21 had in front of me at the time. But it
22 included, it included the acquisition balance
23 sheets, so that would be Exhibit 377-A.
24 It included listings of margin and
25 collateral, which are, I believe, part of

Page 12

1 ROMAIN
2 Ms. James' declaration.
3 I don't recall that -- I don't recall
4 any other documents.
5 Q. Now, did you have her declaration in
6 front of you when you were on the call?
7 A. I definitely had the exhibits which
8 were the listings. I don't recall if I had any
9 preceding text.
10 Q. Do you recall having any document with
11 you on the call other than Exhibit 377-A and the
12 exhibits to Ms. James' declaration?
13 MR. HUME: Objection, asked and
14 answered.
15 A. I don't.
16 Q. I'll show you a copy of Ms. James'
17 declaration and ask you to confirm those are the
18 exhibits that you are referring to.
19 A. OK.
20 Q. We'll mark this as Exhibit 535-A.
21 (Exhibit 535A, declaration of
22 Elizabeth James marked for identification,
23 as of this date.)
24 Q. Sir, you have Exhibit 535A. Have you
25 seen that document before, the declaration of

Page 13

1 ROMAIN
2 Elizabeth James?
3 A. I have, yes.
4 Q. When did you see it before?
5 A. I first saw it, I think on Monday.
6 Q. What about the exhibits, Exhibit 1, 2
7 and 3 to the James declaration? When did you
8 see those before?
9 A. Yes, at the same time.
10 Q. And you had each of those exhibits
11 before you when you were on the call with
12 Ms. James?
13 A. Yes.
14 Q. Now, do you know who set up the call?
15 A. I don't actually, no.
16 Q. Was there an agenda for the call?
17 A. There was not a formal agenda.
18 Q. And you have mentioned that you had
19 spoken to Ms. James briefly a couple of times
20 before the call. Can you tell us what were the
21 nature of those communications?
22 A. I don't recall. They would have been
23 very brief conversations at some time in the
24 preceding weeks. So I don't recall.
25 Q. Do you recall generally why you had --

Page 14	Page 16
<p>1 ROMAIN</p> <p>2 first of all, let me ask you, had you reached</p> <p>3 out to Ms. James or had she called you?</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall anything of the</p> <p>6 conversations that you have had with Ms. James</p> <p>7 prior to Monday?</p> <p>8 A. No, only that they were brief. I</p> <p>9 don't recall ever spending a great deal of time</p> <p>10 speaking with Liz James before yesterday.</p> <p>11 Q. When you had the call yesterday --</p> <p>12 MR. HUME: Yesterday or Monday?</p> <p>13 Q. I am sorry, Monday. Was it Monday or</p> <p>14 yesterday?</p> <p>15 A. The call was yesterday.</p> <p>16 Q. Yesterday. I am sorry. I think you</p> <p>17 may have mentioned Monday a couple of times?</p> <p>18 A. I think you asked when I first saw the</p> <p>19 declaration and I mentioned Monday.</p> <p>20 Q. Thank you for clearing the record.</p> <p>21 So you first saw the declaration,</p> <p>22 Exhibit 535A, on Monday, but the call with</p> <p>23 Ms. James that you have been talking about</p> <p>24 happened yesterday?</p> <p>25 A. That's correct.</p>	<p>1 ROMAIN</p> <p>2 Q. With respect to Exhibit 1, can you</p> <p>3 tell us what was discussed concerning Exhibit 1?</p> <p>4 A. It was to confirm -- it was to confirm</p> <p>5 facts which I had already gathered around my</p> <p>6 understanding of the proprietary futures margin</p> <p>7 which had not yet been delivered and to confirm</p> <p>8 that her information was consistent with mine,</p> <p>9 which it was.</p> <p>10 Q. And based on the facts that you had</p> <p>11 gathered, what was your understanding of</p> <p>12 Exhibit 1?</p> <p>13 A. My understanding of Exhibit 1 was that</p> <p>14 it contained a breakdown of undelivered margin</p> <p>15 from proprietary futures accounts.</p> <p>16 Q. This notes at the top of Exhibit 1,</p> <p>17 "valued as of account closeout," what's your</p> <p>18 understanding as to what that refers to?</p> <p>19 A. I'm not entirely sure.</p> <p>20 Q. Is the total here, 457 million and</p> <p>21 change, is that included on the acquisition</p> <p>22 balance sheet?</p> <p>23 A. The -- some is and some isn't. The</p> <p>24 amounts which were included were in relation to</p> <p>25 Lehman Japan and Lehman Singapore.</p>
Page 15	Page 17
<p>1 ROMAIN</p> <p>2 Q. Why don't you tell us, just lead us</p> <p>3 through that call as best you recall it from the</p> <p>4 very beginning through the end?</p> <p>5 MR. HUME: Again, I wasn't on the</p> <p>6 call. To the extent the call involved two</p> <p>7 other lawyers, there may be work product</p> <p>8 privileged communications with lawyers, so I</p> <p>9 instruct the witness not to answer to the</p> <p>10 extent it involves privileged communications</p> <p>11 from the lawyers.</p> <p>12 To the extent you are simply</p> <p>13 confirming facts that are in your notes,</p> <p>14 then I think the witness can answer.</p> <p>15 A. I don't recall from beginning to end</p> <p>16 the content of the conversation. I -- the --</p> <p>17 the main content as regards facts was to go</p> <p>18 through the schedules and insure that it was</p> <p>19 consistent with my understanding of the</p> <p>20 delivered and undelivered proprietary and</p> <p>21 customer margin.</p> <p>22 Q. When you say the schedules, you are</p> <p>23 referring to Exhibit 1, 2 and 3 to the James</p> <p>24 declaration?</p> <p>25 A. That's right, yes.</p>	<p>1 ROMAIN</p> <p>2 The amounts which weren't included</p> <p>3 form part of the -- there is an amount of 470</p> <p>4 million dollars in undelivered margin</p> <p>5 proprietary and customer which isn't included in</p> <p>6 the acquisition balance sheets.</p> <p>7 So some of that is included on</p> <p>8 Exhibit 1, and some of it is included on</p> <p>9 Exhibit 3.</p> <p>10 Q. OK. And with respect to Exhibit 1,</p> <p>11 you have identified Lehman Japan. That's</p> <p>12 designated by the Lehman JP? Is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And you mentioned Lehman Singapore. I</p> <p>15 assume that's Lehman SGP?</p> <p>16 A. Yes.</p> <p>17 Q. What about Bank of Montreal and</p> <p>18 Kenanga? Are they included?</p> <p>19 A. Didn't go through line by line, but</p> <p>20 certainly the amounts, the amounts for the other</p> <p>21 brokers for Lehman Japan -- the brokers other</p> <p>22 than Lehman Japan and Lehman Singapore across</p> <p>23 Exhibit 1 and 3 were materially the same as the</p> <p>24 amount included on the acquisition balance</p> <p>25 sheet.</p>

5 (Pages 14 to 17)

Page 18

1 ROMAIN
2 So I didn't do a position-by-position
3 reconciliation, but I just wanted to insure that
4 if I looked at the information that Liz James
5 was included -- was including in her
6 declaration, that -- at a high level -- well, at
7 a level of reasonable materiality, that it was
8 consistent with my understanding of what was and
9 wasn't included on the acquisition balance
10 sheet, and it was consistent.
11 Q. For Exhibit 3 you are saying again
12 what is designated under Lehman Brothers Japan
13 is included on the acquisition balance sheet?
14 A. That's correct.
15 Q. And the same for -- I don't see Lehman
16 Brothers Singapore on Exhibit 3.
17 A. Yeah. It's -- Lehman Brothers PTE I
18 believe is a Singapore entity. I think that's
19 the one.
20 Q. Anything else that you are aware of
21 that's included here other than Lehman Brothers
22 Japan and Lehman Brothers PTE?
23 A. In Exhibit 1?
24 Q. In Exhibit 3, I am sorry.
25 A. Oh, right. Exhibit 3, everything is

Page 19

1 ROMAIN
2 included other than amounts which are Lehman
3 affiliates with non-Japan and Singapore, so the
4 third-party foreign brokers, so the 99 million
5 dollars is included, and 5 million dollars,
6 although it is a small item, I believe is
7 included.
8 The amounts which are not included are
9 only the foreign Lehman affiliates other than
10 Singapore and Japan.
11 Q. So that's Lehman Brothers SA and
12 Lehman Brothers International Europe?
13 A. Yes. I'm not sure about Futures Asia,
14 as I didn't do a position-by-position
15 reconciliation, but that's -- that's the
16 approach that was taken to recognition. That's
17 the approach that was taken to recognition in
18 the acquisition balance sheet.
19 Properly customer cash from foreign
20 Lehman affiliates other than Singapore and Japan
21 were not included in the acquisition balance
22 sheet.
23 Q. Did you discuss with Ms. James what
24 was meant by "valued as of account closeout" on
25 Exhibit 1?

Page 20

1 ROMAIN
2 A. It was mentioned briefly. Liz would
3 be able to explain in greater detail exactly
4 what it meant.
5 My recollection was that the valuation
6 dates for these accounts are not the same. They
7 were valued based on statements on the date that
8 the relevant accounts were closed out. So --
9 and those dates were different between different
10 brokers and custodians.
11 In terms of any dealer detail than
12 that, I don't have it, because the numbers were
13 materially similar to the numbers I was
14 expecting to see, so I didn't investigate any
15 marginal valuation differences with Liz.
16 Q. So it is your understanding that the
17 valuation of these were valued as -- based on
18 statements as of the closeout of the accounts;
19 is that right?
20 MR. HUME: Objection, asked and
21 answered.
22 A. That's my recollection of the
23 conversation.
24 Q. And with respect to Exhibit 2 and
25 Exhibit 3, it is your understanding that all

Page 21

1 ROMAIN
2 those valuations are based on statements as of
3 September 19, 2008?
4 A. I'm not sure. It is only the title of
5 the spreadsheet would indicate that, but we
6 didn't go into the issue of valuation date for
7 these exhibits in any detail on the call, so.
8 Q. Well, let me ask you, Exhibit 2, is
9 that -- are the amounts reflected on Exhibit 2
10 included on the acquisition balance sheet?
11 A. Yes. All these items are included.
12 As I mentioned, we didn't reconcile the precise
13 valuations, but the totals were materially what
14 I was expecting to see, and the items all were
15 included.
16 So there may be some immaterial
17 differences in the precise number.
18 Q. And if we wanted to check a specific
19 item here, we would go to what? To the
20 statement? The backup for this, in other words,
21 what's your understanding is the backup of the
22 individual numbers here?
23 A. My understanding of the backup is that
24 it was statements, but to be definitive, you'd
25 be better to ask Liz.

Page 22

1 ROMAIN
2 Q. Can you tell me where on the
3 acquisition balance sheet the amounts set forth
4 in the 2.2 billion dollars contained in
5 Exhibit 2 is reflected?
6 A. Absolutely. So in the acquisition
7 balance sheets, in terms of the balance sheet
8 which was actually used and referred to most
9 often, that would be the second page of
10 Exhibit 377A, and those items would be included
11 in cell C17.
12 In the grossed-out, grossed-up version
13 of Exhibit 377A, which is the third page, they
14 would be included in cell F20.
15 Q. The first part of Exhibit 2 refers to
16 money market funds. Can you tell me what is
17 listed underneath that, starting with BGI prime
18 MM? What are these money market funds and what
19 do they represent?
20 MR. HUME: Bill, can I just ask where
21 in the notice we are? Because I want to
22 make sure it is one Mr. Romain is designated
23 for. These questions may be more
24 appropriate for Liz James.
25 MR. MAGUIRE: Yeah. I believe there

Page 23

1 ROMAIN
2 is actually several topics, principally
3 377A, the acquisition balance sheet. I
4 understand that all of this is on the
5 balance sheet. I just want to have an
6 understanding of what the asset is that is
7 reflected on the balance sheet.
8 If the witness doesn't know, obviously
9 we will take it up with Ms. James.
10 A. These, the money market funds were
11 part of the assets of the acquired customer
12 business. They were essentially assets which
13 were held previously by LBI to secure
14 obligations of its customers, and there was
15 obviously an offsetting liability to return that
16 marginal collateral to those customers, which is
17 included in the relevant customer account.
18 That's the case for the money market
19 funds and also the cash items in Exhibit 2.
20 Q. Where is the offsetting liability
21 reflected on the Exhibit 377A?
22 A. In the summary version in the second
23 page of 377A, it's included within cell C17.
24 And in the grossed-up version, the third page of
25 Exhibit 377A, it is included in cell E44.

Page 24

1 ROMAIN
2 Q. You referred to, is that an E44?
3 A. That's correct.
4 Q. And that's an amount of 2.6 billion
5 dollars?
6 A. Yes. The obligation is part of the
7 customer accounts which is included in that
8 cell, but the cell includes other things.
9 Q. Does that cell also include the -- any
10 other items reflected on Exhibit 2?
11 A. No.
12 Q. So that cell is 2.6 billion dollars,
13 and you're saying that the 2.6, 1 billion and 63
14 million represents these money market funds on
15 Exhibit 2?
16 A. No, no.
17 Q. No?
18 A. The money market funds are assets
19 which are included in cell F20. The point I was
20 making was more that customer accounts are also
21 recorded. They are in 2.60. And the customer
22 accounts include -- well, principally two things
23 for each customer, open positions and
24 collateral-related obligations.
25 And they are included in the 2.6 along

Page 25

1 ROMAIN
2 with -- the total customer liability within cell
3 E44 is, I believe, around -- actually I'll
4 check. It is most of the 2.6, but I'll check in
5 my notes.
6 Yes. So, out of the 2.6, 2.34 billion
7 dollars are customer accounts. The remainder
8 are liabilities to exchanges and brokers.
9 Q. So of the 2.6, it breaks down into
10 2.34 of customer liabilities and a remaining --
11 I am sorry, how much is the rest?
12 A. 260 million, I guess. Approximately.
13 Q. And that represents, 260 million
14 represents what?
15 A. It's liabilities to various exchanges
16 and brokers.
17 Q. And if you can explain for us the
18 accounting in terms of the 2.34. That
19 represents money that is -- has been posted by
20 customers and a liability that the brokerage has
21 to those customers; is that correct?
22 MR. HUME: Objection to the form of
23 the question.
24 Q. Maybe you could just -- I understand
25 you said that the 2.34 represents a liability to

Page 26

ROMAIN

customers.

A. It represents, it represents the customer accounts which are in liability positions. Customer accounts are representations of the receivable or payable between -- well, previously LBI and now Barclays and the relevant customer, and entries into those accounts will be made for a number of reasons, but you're right, one of those reasons is if they post collateral or margin to secure their obligations, then the accounting would be that we would record the collateral on balance sheets as assets and also record a liability to the customer.

Q. And what other customer -- when you said customer accounts and liability positions, can you tell me how else a customer account is in a liability position, other than by a customer posting collateral?

A. Nothing comes to mind. I'm not sure I can be definitive that there is no other way. I'm not an expert in the operation of futures or -- well, in the futures and other exchange traded accounts, but certainly the main way in

Page 28

ROMAIN

A. -- it is posted?

Yeah, there are two entries recorded. One is a debit entry within assets for the margin which has been received. The other is a credit entry within liabilities within the -- representing the liability entry within the relevant customer accounts.

Q. Now, when the customer posts margin to secure a particular position, the broker may have to post margin at an exchange; is that your understanding?

A. The broker will -- in that situation, there is also -- there will also be an obligation on the broker to post margin in relation to its trades with the exchange, and some of its trades with the exchange represent customer trades.

Q. So we have a customer who requires a particular position at an exchange. The broker may ask the customer to post margin with the broker, and then we have the double entry booking that you described, the debit to assets for the margin and a credit to liabilities?

A. Yes.

Page 27

ROMAIN

which it will end up in a liability position is where they post collateral.

Q. Have you investigated whether there is any customer accounts and liability positions other than by a customer posting collateral to secure margin?

A. I've not investigated on a line-by-line basis, so I could not be definitive that there is no customer accounts in a liability position for any other reason. But what I can say is that the large -- the very large majority of customer accounts in that population are in a liability position for that reason.

Q. And you're not aware of any exception?

A. I'm not aware of any exception, but I haven't looked for any exception.

Q. Can you explain to me the accounting when a customer posts margin to secure a customer position?

MR. HUME: Objection, vague.

A. Do you mean the double entry which is recorded when --

Q. Yeah.

Page 29

ROMAIN

MR. HUME: I will object to the form of the question, and again --

Q. And those two entries --

MR. HUME: My objection wasn't finished.

You are asking this witness questions about how the futures business works, which is beyond the scope of his 30(b)(6).

MR. MAGUIRE: I'm just asking for the debits and the credits. I'm just going to keep it to the accounting for now.

Q. My question then is, when the broker then turns around and takes that position on the exchange for its customer, it then has to post margin or may have to post margin with the exchange?

A. It may or may not.

Q. Where it does have to post margin, can you tell me what the accounting is for that?

A. So when one of our accounts has to post margin, it will record two entries. One is it removes the asset from its balance sheets, and the second is it records a receivable from the exchange.

8 (Pages 26 to 29)

Page 30

1 ROMAIN
2 Q. In the event that none of the margin
3 that is posted is used when the position is
4 closed out, how does the reversing of that
5 transaction work?
6 A. Sorry?
7 MR. HUME: Objection, vague, no
8 foundation, and beyond the scope of his
9 30(b)(6).
10 Q. You said the broker removes the assets
11 that's put, I guess, in the amount of the margin
12 that's being posted and records a receivable
13 from the exchange?
14 A. Yeah, if we are talking about cash
15 collateral. Yeah.
16 Q. And then if the margin ultimately is
17 returned to the broker, is that accounting
18 reversed?
19 MR. HUME: Objection, you are beyond
20 the scope of the 30(b)(6). Where are you in
21 the 30(b)(6)?
22 MR. MAGUIRE: Well, we are trying to
23 get the acquisition balance sheet. I
24 understand there's 2.6 billion dollars of
25 liabilities of which 2.34 represent customer

Page 31

1 ROMAIN
2 margins, so I want to understand how that
3 accounting rolls up to the balance sheet.
4 MR. HUME: Then ask him that. You are
5 asking him a hypothetical about how things
6 work.
7 MR. MAGUIRE: It is not a
8 hypothetical. This is all customer
9 liabilities. The witness testified that
10 2.34 represents customer accounts and
11 liability positions.
12 Q. I'm simply asking, where you have
13 margin that the exchange has posted because of
14 positions that its customer wants, and
15 ultimately those positions are closed out and
16 the margin is no longer needed by the exchange,
17 the margin is returned to the broker, does the
18 broker then reverse the accounting that you
19 described and reverse the receivable?
20 MR. HUME: What does that have to do
21 with the 2.34? You are asking a
22 hypothetical, when this happens or that
23 happens.
24 MR. MAGUIRE: If you want to direct
25 the witness not to answer, do so and we will

Page 32

1 ROMAIN
2 move on. I'm not going to argue the
3 question with you.
4 A. To be clear, the amounts which were
5 included in the acquisition balance sheet were a
6 snapshot of the assets which were either held by
7 LBI as security for customer obligations with an
8 offsetting amount within customer accounts and
9 the assets which were held at various brokers
10 and exchanges on that date.
11 So the accounting within LBI
12 beforehand didn't feed into the acquisition
13 accounting. The acquisition accounting is a
14 snapshot for what the assets and liabilities
15 acquired were on that date.
16 Q. And the liabilities included the 2.34
17 for customer --
18 A. That's correct.
19 Q. -- accounts.
20 Can you tell me where that 2.34 is on
21 the first page of Exhibit 377A?
22 A. It is included within cell D20 or D --
23 C20 and D20.
24 Q. The -- any margin that Lehman had
25 posted with any exchange in respect of the

Page 33

1 ROMAIN
2 customer positions that had given rise to the
3 2.34 billion dollar of liability, where is that
4 margin?
5 A. I am sorry, could you repeat that
6 question.
7 Q. I understand that there is 2.6 billion
8 dollars that you have testified about, of which
9 2.34 represents customers and the other is
10 liability to exchanges and brokers.
11 A. Yup.
12 Q. Focusing now specifically on the
13 customers, and I understand that most, if not
14 all of that arose from where the customer had
15 posted collateral to secure margin. What I am
16 looking for is where Lehman posted margin --
17 A. Right.
18 Q. -- at the exchanges in respect of
19 those customer positions.
20 A. Yeah, that's a difficulty --
21 MR. HUME: Objection. Objection,
22 vague as to "in respect of."
23 A. Yeah. Because Lehman posts collateral
24 to exchanges in relation to the requirements of
25 those exchanges or brokers upon Lehman rather

Page 34

ROMAIN

than -- so there is not a direct correlation, you will not be able to draw a direct correlation between those two items.

You wouldn't be able to look at the amounts posted by Lehman with brokers and specifically say whether they are customer -- whether they came from a cash receipt from a customer or they came from LBI's cash otherwise, because cash is fungible.

But there are two separate items. There are -- in terms of the assets which were recorded on the acquisition date, there are two separate items. There are items which were held by LBI as security for customer obligations with a liability in the customer accounts, and then there is also assets which are held by brokers as security for LBI's obligations to those brokers. And those -- in terms of the acquisition accounting, those two items are both reflected.

Q. Do the exchanges keep separate or did Lehman maintain separate accounts at the exchanges for its proprietary positions as opposed to customer positions?

Page 35

ROMAIN

MR. HUME: Objection, lacks foundation, and beyond the scope of the 30(b)(6).

A. I'd be wary of getting into trying to explain the nature of the accounts which Lehman held or -- which Lehman had with brokers, because my understanding is limited to what I needed to understand to be able to prepare the accounting. I'm not an expert on how that works.

Q. So you're not able to say how much of the collateral that Lehman posted was posted in respect of accounts where the positions were for Lehman's customers as opposed to its proprietary activities?

A. I'm unable to -- I have -- actually, give me a second, I'll be able to articulate what I can talk to knowledgeably and what I can't.

Yes. So based on discussion with Liz and also listings which fed into my acquisition accounting, I'm able to distinguish between accounts which are designated as proprietary accounts and accounts which are designated as

Page 36

ROMAIN

customer accounts. However, at a greater level of detail in terms of exactly how that works with the relationship between LBI and the brokers, I'm probably not the best person to talk to that.

That split is the one contained in Exhibits 1, 2 and 3 of Liz James' testimony.

Q. If I wanted to find out how much margin LBI posted with respect to customer positions, are you the best person to ask or someone else?

A. The best person to ask about that would be Liz James.

Q. And you're not able to tell me that from either the acquisition balance sheet or any of the pages that are part of Exhibit 377A?

A. That's correct. It is -- all of the assets which are held to secure customer obligations or held with brokers to support LBI's obligations, either in customer or proprietary accounts, are included as assets, but for accounting purposes, the distinction is not of great significance.

Q. Is there a distinction from an

Page 37

ROMAIN

accounting perspective between customer and proprietary accounts in that with customer accounts you have a liability to customers that you don't have in the case of the broker proprietary positions?

A. For accounting purposes, assets and liabilities are presented separately, notwithstanding the fact that there are obviously interrelationships between how the amounts arise, and between the assets and liabilities.

But purely for presentational purposes in the annual report, they are shown separately. So the links between the two would not be clear from Barclays' external financial reporting.

Q. Your involvement has only been with respect to the financial reporting and the accounting?

A. That's correct.

Q. You will see on Exhibit 377A, the first page has an amount for cash, 1.55 billion dollars.

A. Yes.

Q. Can you tell me where that cash is?

10 (Pages 34 to 37)

Page 38

1 ROMAIN
2 A. The amount included within cash has
3 two elements. I'm just trying to make sure
4 that -- if you notice, the first page of Exhibit
5 377A was put together purely for external
6 reporting purposes. So the actual balance sheet
7 which was used and prepared and best understood
8 are the following pages.
9 So there are links between those
10 balance sheets and the front page. Those
11 categories, they are not meaningful in terms of
12 how the acquisition balance sheet was actually
13 put together.
14 My belief is that the 1.55 has two
15 elements, 1.25 received as part of settlement
16 with JP Morgan in December 2008, and 300 million
17 which was received as part of the Schedule A
18 settlement and for a matured security in
19 September of 2008.
20 I think that they are the two items
21 which make up that balance.
22 Q. When you say Schedule A settlement,
23 what are you referring to?
24 A. There was an ongoing discussion and
25 then dispute with JP Morgan as to the settlement

Page 39

1 ROMAIN
2 of part of the Schedule A delivery, which was
3 resolved in December, and resulted in the
4 receipt of certain securities and 1.25 billion
5 dollars in cash.
6 Q. And the 300 million that you referred
7 to, what is that?
8 A. So there was a delivery of assets in
9 September in relation again to Schedule A assets
10 which were all securities, with one exception,
11 which was that one of the securities matured
12 either on the day it was going to be delivered
13 or very shortly before, I believe.
14 But whatever, we ended up receiving
15 300 million in cash instead of the security
16 because it matured.
17 Q. And it's your understanding that the
18 1.55 billion in cash does not include any margin
19 or clearing fund that Lehman maintained at any
20 exchange?
21 A. That's correct. I believe that's
22 included in cash. And it is included in the
23 assets but not in that line item within assets.
24 Q. I am showing you a document previously
25 marked as 407A. Where were you on the weekend

Page 40

1 ROMAIN
2 of Saturday, 20th September, 2008?
3 A. I was in New York.
4 Q. And you were working on the balance
5 sheet; is that right?
6 A. Saturday, 20th, yeah. I had just
7 started trying to pull something together, yes.
8 Q. And over time, you continued to keep
9 various iterations of the draft balance sheet?
10 A. That's correct.
11 Q. Until it was ultimately finalized in
12 Exhibit 377A?
13 A. That's correct, yes.
14 Q. Have there been any corrections or
15 additions to the balance sheet, Exhibit 377A?
16 A. No, there have not. The permitted
17 period for corrections to acquisition accounting
18 expired a year after the acquisition, so 22nd of
19 September, 2009, and there have been no
20 amendments.
21 Q. If you turn to the balance sheet
22 attached to this e-mail, I assume -- you have
23 got OS for a number of entries. Does that mean
24 outstanding?
25 A. It does, yes.

Page 41

1 ROMAIN
2 Q. You were waiting on information; is
3 that correct?
4 A. Yes.
5 Q. And there is a reference a couple of
6 lines down to "valuation adjustment." Do you
7 see that?
8 A. Yes.
9 Q. What were you told about the need for
10 a valuation adjustment?
11 A. Well, at that stage it was very early
12 in the process, so the information that I was
13 receiving was very draft and changing very
14 rapidly. In accounting terms, it is necessary
15 to include financial assets in acquisition
16 accounting at their fair value, and that should
17 be fair value determined according to business
18 as usual valuation policies and procedures for
19 the bank and relevant accounting standards.
20 So it was known that we would need to
21 assess the identity and appropriate valuation of
22 the assets, and that that would take some time.
23 In terms of what I was told about the
24 source of that 2.5 in particular, I have no
25 recollection. But certainly through the

Page 42

1 ROMAIN
2 periods, the understanding of the population,
3 the sources of the valuations in terms of the
4 original, sort of mid prices, and also any
5 adjustments required to get to an appropriate
6 bid level required by IFRS accounting standards
7 was something that was changed for some time.
8 Q. A little further down you'll see cash,
9 I.3. What was your understanding as to where
10 that cash was at the -- back when you were in
11 New York on September 20?
12 A. I don't recall the source information
13 for this particular iteration of the balance
14 sheet.
15 Q. If you could --
16 A. No, I don't. I don't recall that.
17 Q. If you go two lines down, you will see
18 previously excluded, 50 percent MBS. What did
19 that represent?
20 A. I know what it referred to. I don't
21 know what the number itself represented. It
22 would certainly have been a very initial
23 estimate of the items to be included. But I
24 recall that there was some suggestion that we
25 would take only 50 percent of mortgage-backed

Page 43

1 ROMAIN
2 securities, and that changed -- I don't recall
3 the precise order of what happened in relation
4 to that term or the source of that number. But
5 the item would have related in some way to the
6 information I had been provided at that point in
7 time on that item.
8 Q. This line item disappears from the
9 balance sheet that ultimately culminated -- the
10 spreadsheet that culminated in 377A. Can you
11 explain why that happened?
12 A. As we went forward, we got information
13 which improved over time on what assets we did
14 acquire and what assets we needed to value, and
15 they were grouped appropriately. So all of the
16 Schedule A assets and Schedule B assets were
17 included in the inventory line, so there was no
18 breakout in the acquisition balance sheet
19 between asset classes, including
20 mortgage-backed.
21 Whether it was included or excluded
22 from discussions around -- in terms of the deal
23 at various times was not relevant going forward,
24 because we were accounting for the deal that
25 occurred.

Page 44

1 ROMAIN
2 Q. Does Exhibit 377A include any
3 mortgage-backed securities?
4 MR. HUME: Objection, lacks
5 foundation.
6 A. It does. I'm not -- I don't -- I
7 don't have at hand the breakdown. I think you
8 would have it in other exhibits, underlying the
9 valuation where things are split by CUSIP and
10 also by type.
11 So the best source of information for
12 precisely the breakdown of that would be to
13 refer to those exhibits.
14 Q. The underlying CUSIP detail --
15 A. And the summaries thereof which fed
16 into the inventory lines in the acquisition
17 balance sheets.
18 Q. Meaning the initial inventory and the
19 JPM inventory lines?
20 A. Yes.
21 Q. We will mark as Exhibit 536A.
22 (E Exhibit 536A, document Bates stamped
23 BCI-EX-(S) 52476 through 78 with attachment
24 marked for identification, as of this date.)
25 Q. Sir, this is an e-mail you sent on or

Page 45

1 ROMAIN
2 about the 22nd of September, 2008?
3 A. Yeah.
4 Q. If you'll turn to the attached balance
5 sheet, and can you tell me what the reference to
6 "new box" is there?
7 A. That at the time that was reflective
8 of the information I had on a Schedule A versus
9 Schedule B split, although I wouldn't have
10 understood it in those terms at the time. It
11 was very early, so there was very provisional
12 information around the inventory which had been
13 acquired, which at the time was giving the book
14 value of 44.88 and the adjusted value of 42.05.
15 That's just additional information
16 that somebody would have given me at the time
17 for an estimated split between Schedule A and
18 Schedule B assets.
19 Q. And the reference to current book
20 value, whose book value is that?
21 MR. HUME: Objection, vague.
22 A. I don't know. I don't know.
23 Q. The repo, did you understand that to
24 constitute the inventory in Schedule A?
25 A. At that time, I don't recall whether I

Page 46

1 ROMAIN
2 had a good understanding of what was meant by
3 Schedule A and Schedule B, but I would have
4 understood it as being the information I had at
5 the time around the assets received as part of
6 the repo transaction.
7 But as I say, I have to express that
8 that was -- that was based on information which
9 I had at that time which was -- certainly at
10 that time was changing very rapidly as I got
11 more and more accurate information.
12 Q. And based not only on the information
13 you had then but also the information you have
14 now, your understanding of the assets under "new
15 box" is what, the assets in Schedule B?
16 A. My understanding now is that was the
17 information that I had at the time for the split
18 between Schedule A and Schedule B, not that that
19 ended up being the actual split, because at that
20 time, it was based on very early provisional
21 information.
22 Q. Is the -- are all of the assets on
23 Schedule A and Schedule B included on the
24 acquisition balance sheet, Exhibit 377A?
25 A. Are all of the --

Page 47

1 ROMAIN
2 MR. HUME: I am going to object to the
3 vagueness of the question.
4 Q. Well, let me try to break it out. The
5 assets that were on Schedule A, are they all
6 reflected on Exhibit 377A?
7 A. I never reviewed Schedule A, but all
8 of the assets that were received in settlement
9 of -- either received in September in respect of
10 settlement of Schedule A or received in December
11 in respect of the settlement of other aspects of
12 Schedule A from JP Morgan are included in the
13 acquisition balance sheets.
14 As regards Schedule B, there is an
15 amount which is included in the acquisition
16 balance sheet which represents securities which
17 were received in September from Schedule B and
18 other securities from Schedule B which by the
19 time we finalized our acquisition accounting --
20 well, by the time we finalized our 2008
21 financial statements, we were in a position to
22 include in the acquisition balance sheet. It
23 does not include some other assets from
24 Schedule B to which we also had title.
25 Q. And can you explain the split between

Page 48

1 ROMAIN
2 the assets from Schedule B that Barclays
3 believes it is entitled to that -- what's the
4 distinction between Schedule B assets that are
5 reflected on Exhibit 377A and the ones that are
6 not?
7 A. The distinction was based on which
8 assets on that schedule we had done sufficient
9 work around and had a sufficient understanding
10 of by -- I can't recall the exact date, but
11 February 2009, when we were finalizing our 2008
12 financial statements, to be comfortable to
13 include them within our acquisition accounting.
14 There are other assets on Schedule B
15 which we completed our consideration of our
16 entitlement after that date, and they are the
17 ones which are not included in the acquisition
18 balance sheet.
19 Q. If you turn to Exhibit 399A. With
20 respect to the Schedule B assets that are not
21 reflected on the acquisition balance sheet, can
22 you tell me where they are?
23 A. Yes. They are included in the item
24 unencumbered assets, brackets B2/C.
25 Q. That's 162 million?

Page 49

1 ROMAIN
2 A. Yes.
3 Q. Where are those assets?
4 A. I don't know precisely where they are.
5 I know they have not been delivered to Barclays,
6 but I'm not sure who is holding them.
7 Q. What is the backup for this
8 162 million figure that you have here?
9 A. There is a colleague who pulls
10 together a listing which we update monthly of
11 assets not received, and he does the work on
12 that. But it is basically information which is
13 received from some colleagues who work in
14 operations who did the work to work through
15 Schedule B, consider which were unencumbered
16 and therefore available for delivery to
17 Barclays.
18 So we updated our understanding, but
19 it was based on that internal consideration. I
20 don't have underlying listings myself.
21 Q. Who is the person who has the
22 underlying listings for this 162 million?
23 A. The colleague that works with me on
24 this is Charles Utley, but he would be acquiring
25 them from others who actually had the listings.

Page 50	Page 52
<p>1 ROMAIN</p> <p>2 I don't know what their names are.</p> <p>3 Q. But he acquires the actual listing</p> <p>4 itself or he just is told a number?</p> <p>5 A. He works with the people who put</p> <p>6 together the number to update our understanding</p> <p>7 on a monthly basis. I'm not positive of the</p> <p>8 extent of his discussion with them, whether he</p> <p>9 just takes their listing or whether he is</p> <p>10 involved in additional discussion. I think it</p> <p>11 is closer to the former. I don't think he does</p> <p>12 too much other than just collate other people's</p> <p>13 work in that area.</p> <p>14 Q. You haven't seen the listing, the</p> <p>15 backup for the 162 million?</p> <p>16 A. I could not definitively say I have</p> <p>17 never seen a listing at any time, but to the</p> <p>18 best of my -- to the best of my knowledge, I</p> <p>19 don't have it.</p> <p>20 Q. What about the backup for the next</p> <p>21 line, can you just explain what the next line is</p> <p>22 and then tell us where the backup is?</p> <p>23 A. Yes. That's principal and interest on</p> <p>24 Schedule B assets which have not been received</p> <p>25 but are included on the balance sheets. So over</p>	<p>1 ROMAIN</p> <p>2 A. That would be the primary source of --</p> <p>3 that would be the primary source of backing.</p> <p>4 Q. And is Mr. Utley the person who</p> <p>5 collects the information for that line as well</p> <p>6 as for the other lines here?</p> <p>7 A. Yeah, he is -- he collates the</p> <p>8 information on these items on a monthly basis to</p> <p>9 update our understanding. He doesn't actually</p> <p>10 do the work, but he collates the information.</p> <p>11 Q. And then the last line, you have</p> <p>12 provisions OCC, looks like JP and P&I?</p> <p>13 A. Yes. That's two items, one of which</p> <p>14 is no longer applicable and one of which is. So</p> <p>15 there was a receivable -- there was a receivable</p> <p>16 which we were recognizing on the balance sheets</p> <p>17 which represented the recovery of the cost of</p> <p>18 closing out OCC affiliate positions and we had</p> <p>19 not recorded the full provision, but we now</p> <p>20 have.</p> <p>21 So the relevant expense has gone</p> <p>22 through P&L in 2009. So that's the difference,</p> <p>23 the position when these notes were put together.</p> <p>24 Since then we have actually recorded that in</p> <p>25 P&L, so that would need to be taken off the</p>
Page 51	Page 53
<p>1 ROMAIN</p> <p>2 time, those assets accrue interest, and</p> <p>3 therefore, we are entitled to that as well.</p> <p>4 So we include that in our listing of</p> <p>5 assets not received and not on balance sheets,</p> <p>6 because we haven't recognized it on the balance</p> <p>7 sheet yet.</p> <p>8 Q. Where is the backup for that?</p> <p>9 A. That would be the same response as for</p> <p>10 the previous item. My colleague worked with</p> <p>11 others within the bank to collate the</p> <p>12 information.</p> <p>13 Q. And that's the same colleague,</p> <p>14 Mr. Utley, who collects that?</p> <p>15 A. Yes.</p> <p>16 Q. And how about the first line, futures</p> <p>17 collateral at affiliates, 460 million, what's</p> <p>18 the backup for that?</p> <p>19 A. So that's the -- those are the items</p> <p>20 that we talked about earlier. So the amount</p> <p>21 within the exhibits to Liz James' testimony</p> <p>22 which are held with foreign affiliates other</p> <p>23 than Japan and Singapore, that's that item.</p> <p>24 Q. So the backup for this item would be</p> <p>25 the various statements for those accounts?</p>	<p>1 ROMAIN</p> <p>2 list.</p> <p>3 There is still the other item which is</p> <p>4 the JP P&I. Basically what that is, is that in</p> <p>5 our valuation of the inventory received from JP</p> <p>6 Morgan in December 2008, we included in that</p> <p>7 valuation accrued principal and interest between</p> <p>8 September and December. We thought we would</p> <p>9 also be entitled to some value from JP Morgan to</p> <p>10 compensate just for the fact that we didn't get</p> <p>11 any assets for three months.</p> <p>12 But the understanding is that the</p> <p>13 eventual agreement reached with JP Morgan was</p> <p>14 that we would not receive such an amount. The</p> <p>15 securities and cash we received was full</p> <p>16 satisfaction of their obligations. And</p> <p>17 therefore, we should have removed that from our</p> <p>18 books and taken an expense. We have not yet</p> <p>19 done so for accounting purposes.</p> <p>20 Q. And can you explain why you have not</p> <p>21 yet done so?</p> <p>22 A. The main reason is that we are</p> <p>23 looking -- the main reason is there are a number</p> <p>24 of assets which we have not recognized to which</p> <p>25 we are entitled, which are the ones which are</p>

Page 54

1 ROMAIN
2 listed above, and we haven't recognized those as
3 income. So we are viewing all of those
4 unrecognized items together and taking a
5 materiality call on whether or not to make an
6 adjustment now or whether to wait until the
7 matter is finally settled.
8 The view we reached is it would be
9 inappropriate to take the expense for the JP
10 Morgan item when we believe there are other
11 assets which we are entitled to and have not yet
12 recognized. So for financial reporting
13 purposes, we haven't recognized any of those
14 items other than the OCC point, which was
15 recognized when the matter was settled.
16 Q. So if you wanted to get the backup for
17 any of these items, the futures collateral,
18 unencumbered assets B2/C, the other remaining
19 two items, you would go to Mr. Utley who
20 collects this information, and he would be able
21 to get them through the operations people?
22 MR. HUME: Object to the use of the
23 word "backup." There is backup to these
24 already produced.
25 Q. That's where you would get the

Page 55

1 ROMAIN
2 information, sir; is that right?
3 A. If I was to -- if I needed the
4 information myself, I would ask Charles for it,
5 yes. Charles Utley.
6 Q. We were looking at Exhibit 536A and
7 the reference to "new box." Did you understand
8 "new box" to refer to clearance boxes? Or do
9 you understand that now?
10 A. I understand it now as being
11 information which was early information about --
12 early information which was attempting to get to
13 that split.
14 Q. And do you understand that there are
15 assets that were at Lehman's clearance box at
16 DTC that are included in the acquisition balance
17 sheet, Exhibit 377A?
18 A. Yes, there are amounts which are
19 included which relate to assets received on
20 19th, 29th and 30th of September from clearance
21 boxes, and also assets not yet received.
22 Q. Do you understand that the balance
23 sheet also includes assets from any other
24 clearance boxes, other than DTC?
25 MR. HUME: Objection, lack of

Page 56

1 ROMAIN
2 foundation.
3 A. I'm not, I'm not certain on that, on
4 that assets.
5 Q. Do you know if there are any assets on
6 the balance sheet from Lehman's clearance box at
7 Euronext?
8 A. I'm not 100 percent sure of what -- I
9 have a complete inventory of the clearance boxes
10 which were represented in Schedule B, and the
11 assets which were included were either delivered
12 or on Schedule B and to which we are entitled.
13 But I personally have never done an inventory of
14 the exact split of within which clearance boxes
15 those assets reside.
16 MR. HUME: Nor is it a 30(b)(6) topic,
17 I don't believe.
18 Q. We will mark this as 537A.
19 (Exhibit 537A, document Bates stamped
20 BCI-EX-(S) 78976 with attachment marked for
21 identification, as of this date.)
22 Q. It's an e-mail dated September 23,
23 2008, from Stephen King.
24 If you turn to the attachment, sir,
25 what I really want to ask you about is at the

Page 57

1 ROMAIN
2 bottom of the first page, you will see a
3 reference to DTC SPO deposit.
4 A. Yeah.
5 Q. Can you tell me what that is?
6 A. I don't definitively know.
7 MR. HUME: This document was not
8 within your 30(b)(6) notice for this
9 witness. I know you want to ask about the
10 SPO deposit, which I think the witness has
11 already testified about, but this is not a
12 document in your notice.
13 MR. MAGUIRE: That's fine.
14 Q. Can you tell me about the SPO deposit?
15 A. Sure. Yes. That's the 300 million
16 dollar item which I mentioned earlier as being
17 one of the two items included in the cash line
18 in the front page of Exhibit 377A.
19 So that was received as part of the
20 assessment of Schedule A delivery in relation to
21 a security which we were informed had matured or
22 was maturing, so you received the 300 million in
23 the estate.
24 MR. HUME: I would be grateful for a
25 short break not too long from now.

Page 58

1 ROMAIN
2 MR. MAGUIRE: That's fine. Maybe we
3 will finish up one document and we will take
4 a break.
5 Q. I will show you Exhibit 85-B. And it
6 is just with respect to the list of exhibits
7 here, the APA schedules.
8 A. Yup.
9 Q. Can you explain to me how they relate,
10 if they relate, to the letters and numbers that
11 you use on the first page of your handwritten
12 notes, Exhibit 399A.
13 And what I am interested in knowing is
14 whether the references that you have to A and B1
15 on the third line of your notes correlate in any
16 way with the Exhibit 85B.
17 A. Sorry, can you just repeat that
18 last --
19 Q. Let me try to break it down for you.
20 If you look at your handwritten notes,
21 if you look at the third line, you see
22 "unencumbered assets A/B1"?
23 A. Yes.
24 Q. Can you tell me whether A/B1 has
25 anything to do with the exhibits that are

Page 59

1 ROMAIN
2 identified on Exhibit 85-B?
3 A. I don't know. I don't think I have
4 ever seen these before.
5 Q. What were you referring to on the
6 third line of 399A when you have that A/B1?
7 A. So they were, they were the -- that
8 was the value of the assets on Schedule B which
9 had not been delivered to Barclays but were
10 included in our acquisition accounting.
11 Q. And what does the A mean after that?
12 A. Well, Schedule B for these purposes
13 was split by operations, I believe. I'm not
14 sure if it was done externally, but certainly my
15 understanding, between lists A, B1, B2 and C,
16 which were qualitatively different and therefore
17 needed a different consideration as to our
18 entitlement to them.
19 Essentially A was assets which were
20 identified as being on Schedule B with no
21 customer claims or encumbrances, or most
22 obviously.
23 B1, B2 and C, I don't have the precise
24 sort of technical differentiation, but as we
25 went through those, items which were on lists B2

Page 60

1 ROMAIN
2 and C, it was more difficult to prove that
3 Barclays was entitled to those or -- I don't
4 know whether it was more difficult to prove.
5 Those we had not -- we had not done the work on
6 those by the time we finalized our acquisition
7 accounting, is what I can say.
8 Q. And have you since done the work?
9 A. I have not done the work personally,
10 but Barclays is in a position whereby we have
11 identified the value of the assets from lists A,
12 B1, B2 and C to which we are entitled, and they
13 are, they are on the balance sheet for A and B1,
14 and they are in the item unencumbered assets B2
15 and C. So lists B2 and C.
16 Q. When did Barclays make the decision as
17 to whether to change its acquisition accounting
18 as reflected on Exhibit 377A?
19 MR. HUME: Objection, vague.
20 A. We haven't changed it. Sorry? Can
21 you explain --
22 Q. When was the decision made not to
23 change it?
24 A. Not to change it?
25 Q. Yeah.

Page 61

1 ROMAIN
2 A. Well, it is an ongoing consideration.
3 So we met regularly through the course of 2008
4 and 2009 within finance to discuss our knowledge
5 of the accounting and whether there was anything
6 which suggested that a change should be made,
7 and that continued up until August -- up until
8 September 22nd, when we were required to make a
9 final decision.
10 Q. And as of September 22nd, had anything
11 changed with respect to the unencumbered assets
12 B2 and C that you have here?
13 A. These were prepared after that.
14 Q. When were these prepared?
15 A. I can't remember the exact date of my
16 deposition. Was it --
17 Q. As of the date of your deposition, you
18 are saying?
19 A. Yeah, yeah.
20 Q. Have there been any changes since
21 then?
22 A. No.
23 Q. With respect to those assets, have
24 you -- has Barclays or you done any
25 consideration as to whether the acquisition

Page 62

Page 64

1 ROMAIN
2 accounting should be changed with respect to the
3 unencumbered assets?

4 A. We are not permitted to change our
5 acquisition accounting. If what is included on
6 that balance sheet requires adjustment now, we
7 would still adjust our financial statements, but
8 it wouldn't feed into the acquisition accounting
9 or negative goodwill calculation. It would just
10 feed into post-acquisition P&L if we had to
11 change anything now.

12 We do continue to consider that, and
13 obviously these proceedings are ongoing. So we
14 continue to consider that.

15 MR. MAGUIRE: OK. I assume these
16 different listings, A, B1, B2, C, have been
17 produced, but if you could just identify the
18 Bates numbers for us, I'd appreciate that.

19 MR. HUME: I believe this all relates,
20 on these lists of unencumbered assets, to
21 what Jim Hrasaka has been designated, as the
22 corporate representative, is in the best
23 position to explain the analysis that
24 underlies those lists, not this witness.

25 MR. MAGUIRE: This is a good time to

1 ROMAIN
2 didn't really have the capacity to do that
3 myself.

4 So I asked Lee Bowell who worked for
5 me over in London to fly across to look at that
6 balance, to work with people who had a greater
7 understanding of it, so we could properly
8 account for it.

9 Q. What did Lee do going forward after
10 you asked him to become involved?

11 A. He did exactly that. He flew across,
12 I'm not sure of the exact date. It was mid
13 October, so shortly before this. And worked
14 with people like Liz James to get an
15 understanding of the futures assets and
16 liabilities that we needed to record in the
17 acquisition balance sheet, because before then,
18 I didn't personally have much information about
19 those balances.

20 So there were -- well, for some time,
21 there was nothing recorded when I had no
22 information. Then there were very early
23 placeholder amounts, placed off some verbal
24 communications or indications, but there was --
25 you will see more information and more breakout

Page 63

Page 65

1 ROMAIN
2 take a break.
3 THE WITNESS: Sure.
4 (Recess)
5 (Exhibit 538A, document Bates stamped
6 BCI-EX-S109996 through I10002 marked for
7 identification, as of this date.)

8 MR. HUME: This is a document we
9 clawed back yesterday.

10 MS. HASSAN: We have the replaced
11 version.

12 MR. HUME: OK.

13 BY MR. MAGUIRE:

14 Q. Sir, you will see under futures
15 customer balances in this exhibit, you have a
16 reference to Lee making progress?

17 A. Yes.

18 Q. Who is Lee?

19 A. Lee is Lee Bowell.

20 Q. What was Lee doing here?

21 A. Well, in relation to the
22 futures-related items, up until about mid
23 October, I hadn't really done much of them. I
24 didn't know much about them or had talked to
25 many of the people who were involved, and I

1 ROMAIN
2 being included from the time that Lee flew
3 across and started working on the area.

4 Q. If you turn to the balance sheet, you
5 will see there is a number of notes. With
6 respect to note 9, does that apply to the 15c3
7 asset?

8 A. Yes.

9 Q. And you will see it says, "Timing of
10 receipt is uncertain and subject to SEC
11 approval."

12 What was the basis, what was the
13 source of your information for that?

14 MR. HUME: Obviously to the extent the
15 question requires you to reveal anything
16 from attorneys, you are instructed not to
17 answer. But otherwise, you may answer.

18 A. I had a limited understanding of the
19 15c3 item, but was aware that there was a
20 receivable which was referred to in the
21 contractual documents in an amount of
22 769 million dollars that was included, and I
23 knew people were working on it in terms of its
24 status in terms of recoverability.

25 But it was included in -- it was

17 (Pages 62 to 65)

Page 66	Page 68
<p>1 ROMAIN</p> <p>2 included, that amount, based on the information</p> <p>3 I had on that date.</p> <p>4 Q. What discussions did you have as to</p> <p>5 whether the SEC would approve the transfer of</p> <p>6 this asset?</p> <p>7 MR. HUME: Other than discussions with</p> <p>8 counsel, if you had any.</p> <p>9 A. I don't recall. I don't recall any.</p> <p>10 Q. Are you aware of anything that</p> <p>11 Barclays has done to assess the likelihood of</p> <p>12 SEC approval?</p> <p>13 A. Not specifically with SEC, no. I'm</p> <p>14 aware that Barclays' position as regards the</p> <p>15 claim and recoverability of the asset is as</p> <p>16 reflected in Exhibit 377A. Yeah.</p> <p>17 Q. Can you tell me, other than including</p> <p>18 it in 377A, can you tell me anything that</p> <p>19 Barclays has done to assess the likelihood that</p> <p>20 it will recover these 15c3 assets in the amount</p> <p>21 of .77 billion dollars?</p> <p>22 MR. HUME: That question is outside</p> <p>23 the scope of the 30(b)(6). I don't think</p> <p>24 the witness can answer it.</p> <p>25 Q. To the extent of your awareness.</p>	<p>1 ROMAIN</p> <p>2 colleague from London to fly across who had</p> <p>3 capacity to work on it. He didn't fly across</p> <p>4 until around about 10th November, I think.</p> <p>5 So before then, any numbers in</p> <p>6 relation to exchange traded options or related</p> <p>7 margin would just have been numbers based on,</p> <p>8 you know, early verbal indications from people</p> <p>9 within the business. And at that time, it looks</p> <p>10 like the item included is 570 million dollars.</p> <p>11 Q. Who is the person who -- you referred</p> <p>12 to somebody flying across. Would you just give</p> <p>13 me the names of the people who handled the</p> <p>14 investigation that you refer to in note 12</p> <p>15 concerning OCC margin?</p> <p>16 A. Well, at that time, it was under</p> <p>17 investigation by people within the business and</p> <p>18 I was just a recipient of information, the main</p> <p>19 information being that the investigation was</p> <p>20 ongoing.</p> <p>21 I was aware of -- I was aware of some</p> <p>22 issue in some areas of the margin which were</p> <p>23 being held, custodian being JP Morgan, and we</p> <p>24 were having other problems with them, so I knew</p> <p>25 that was one of the things which was being</p>
Page 67	Page 69
<p>1 ROMAIN</p> <p>2 A. I don't have any personal awareness.</p> <p>3 Q. Note 12 refers to margin. Do you see</p> <p>4 that, sir?</p> <p>5 A. You referred to -- note 12. It refers</p> <p>6 to the OCC options. The labels given to these</p> <p>7 line items were based on a partial understanding</p> <p>8 as to what they were. But this was, you know,</p> <p>9 this was reflecting knowledge that I knew that</p> <p>10 there was OCC-related assets and liabilities</p> <p>11 which needed to be included.</p> <p>12 Q. And who was doing the investigation</p> <p>13 that you referred to in note 12?</p> <p>14 A. 21st October, in terms of the</p> <p>15 investigation, in terms of what should be</p> <p>16 included in the acquisition balance sheet, there</p> <p>17 wasn't really much. There was a similar</p> <p>18 position to futures, that I had done very little</p> <p>19 work. I had a couple of conversations, so I</p> <p>20 knew that there was something which needed to be</p> <p>21 accounted for. I knew that it included margin</p> <p>22 and it included positions, but I didn't have a</p> <p>23 great deal of information other than that.</p> <p>24 The things that we did to expedite</p> <p>25 that was similar to futures, that I asked a</p>	<p>1 ROMAIN</p> <p>2 thought about, but I didn't have any detailed</p> <p>3 information, other than that.</p> <p>4 Q. Who was the person within the</p> <p>5 business --</p> <p>6 A. My contact was Sean McKenna.</p> <p>7 Q. Sean McKenna? Where is Sean McKenna?</p> <p>8 A. Now?</p> <p>9 Q. Yeah.</p> <p>10 A. He works for a company called C12,</p> <p>11 same company that Stephen King works for.</p> <p>12 Q. At the time he worked for Barclays?</p> <p>13 A. Yes.</p> <p>14 Q. And who else was involved in the</p> <p>15 investigation that you referred to here?</p> <p>16 A. I'm not sure. At that time, at that</p> <p>17 time, I didn't really have the capacity to do</p> <p>18 much more than there was, and I spent most of my</p> <p>19 time on items where I had information I was</p> <p>20 working through. So the inventory, fixed</p> <p>21 assets, other things of that nature.</p> <p>22 The OCC-related options had very</p> <p>23 little finance attention from me, finance</p> <p>24 department at Barclays, very little attention</p> <p>25 from me on that, until Iain Cooper flew across</p>

Page 70

1 ROMAIN
2 in early November.
3 So my main source of information was
4 Sean McKenna. I'm not sure who else on the
5 business side was working on it with him.
6 Q. If you turn to the last page. You see
7 there is a reference to uncertainties around
8 acquired balance sheet, around the middle of the
9 page?
10 A. Yes.
11 MR. HUME: I don't. Where is it?
12 MR. MAGUIRE: It's just --
13 THE WITNESS: It is on the next page.
14 MR. MAGUIRE: Yes, last page, middle
15 of the page.
16 MR. HUME: I see.
17 Q. Can you explain what's meant by the
18 first sentence there?
19 MR. HUME: I'm not sure that's within
20 the 30(b)(6) either.
21 A. My understanding of what it means is
22 that at that time, there was a great deal of
23 uncertainty around various aspects of the
24 balance sheet. In terms of intercompany
25 receivables and payables, LBI had countless

Page 71

1 ROMAIN
2 balances with other Lehman entities for
3 countless purposes, and many of those remained
4 with the LBI company, bankruptcy estate.
5 However, at that point in time, Lee
6 was clearly trying to consider the extent to
7 which receivables and payables from Lehman
8 affiliates in relation to the futures, futures
9 business, so where Lehman affiliates were
10 acting, where Lehman affiliates had the exchange
11 membership, and therefore, LBI traded with those
12 affiliates who then traded with brokers on their
13 behalf, the extent to which those balances
14 should be accounted for.
15 And what he's stating there was that
16 at that time, based on the information he had,
17 there was an uncertainty for him. It doesn't
18 mean for Barclays. He had flown out, so he had
19 started to work on it. So that's what the
20 statement means.
21 Q. Does the acquisition balance sheet
22 include intercompany receivables and payables
23 related to clients' positions at Lehman
24 affiliates acting as brokers?
25 MR. HUME: Objection to the form of

Page 72

1 ROMAIN
2 the question as vague.
3 A. What it includes is -- it includes
4 affiliate balances as regards -- as summarized
5 in the exhibits to Liz James' -- Liz James'
6 declaration. It includes balances with Lehman
7 affiliates to the extent indicated by Liz James'
8 declaration and our conversation earlier on
9 that, in that some affiliate balances are not
10 included on the balance sheets, and some
11 affiliate balances, mainly Singapore and Japan,
12 were included on the balance sheets.
13 Q. And can you explain to us why some
14 were included and some were not included?
15 A. It was a question of when we got to
16 finalizing our 2008 financial reporting, the
17 information that we had on that at that time,
18 based on the situation with many of those
19 affiliates, the distressed nature of the
20 segregation of the relevant assets.
21 So it was recoverability issues.
22 There is no distinction in terms of -- there is
23 no distinction being drawn in terms of
24 entitlement. But we had to take a view on our
25 knowledge around collectability.

Page 73

1 ROMAIN
2 Q. So all receivables and payables
3 related to clients' positions at any Lehman
4 affiliates that had acted as brokers should be
5 on the balance sheet unless there is some
6 recoverability issue?
7 MR. HUME: Objection, mischaracterizes
8 testimony. Ambiguous question.
9 A. They will be on the balance sheet
10 unless they are included in the approximately
11 460 million, 470 million dollar item that we
12 talked about earlier that wasn't included on the
13 balance sheet.
14 Q. We will mark as Exhibit 539A an e-mail
15 from Gary Romain to Michael Guamuccio -- did I
16 pronounce that right?
17 A. I believe so, yes.
18 Q. And others, dated Friday, 24 October,
19 2008.
20 (Exhibit 539A, document Bates stamped
21 BCI-EX110050 marked for identification, as
22 of this date.)
23 Q. Sir, you sent this e-mail to
24 Mr. Guamuccio and others?
25 A. That's correct.

Page 74

1 ROMAIN
2 Q. Did you have a discussion with him
3 about the subject?
4 A. Yes.
5 Q. What was the upshot of that?
6 A. That we found the securities on the
7 date they were delivered.
8 Q. And what was -- what did
9 Mr. Guarnuccio say to you in respect of that?
10 A. There was a discussion around it,
11 because most of the assets on the acquisition
12 balance sheet were valued as of the close date,
13 and there are often matters of judgment and
14 interpretation in terms of accounting which need
15 discussion internally and with auditors, and
16 this is one of them.
17 We needed to explain the view as to
18 why the most appropriate valuation for
19 acquisition accounting for the securities
20 received, securities and cash received from
21 JP Morgan would be to value them based on the
22 value that was eventually delivered to us,
23 rather than a hypothetical value that those same
24 securities might have had on the 22nd of
25 September.

Page 75

1 ROMAIN
2 And we discussed it back and forth for
3 a while, and we were all in agreement that that
4 was the right thing to do.
5 Q. The choice was between the acquisition
6 date and the date of delivery?
7 A. I can't think of -- I can't think of
8 any other date being suggested. I don't have
9 100 percent recall of the entire discussion, but
10 those are the two principal dates which come to
11 mind.
12 Q. Did you assess the financial statement
13 impact of choosing one date over the other?
14 A. No.
15 Q. Did you have any understanding what
16 the impact would be on the financial statements?
17 A. No, no.
18 Q. Do you know whether the market had as
19 a general matter gone up or gone down since the
20 acquisition date?
21 MR. HUME: Objection, vague and
22 ambiguous. What market?
23 A. I don't -- I didn't look in great
24 detail into the components or the individual
25 securities that were eventually delivered in

Page 76

1 ROMAIN
2 December. So as to whether or not their value
3 would have been greater or lesser on that date
4 as compared to September, I don't know.
5 Q. We will mark as Exhibit 540A an e-mail
6 from Mr. Romain to Stephen King dated
7 27 October, 2008.
8 (Exhibit 540A, document Bates stamped
9 BCI-EX-(S)110053 with attachment marked for
10 identification, as of this date.)
11 Q. Did you send this e-mail, sir?
12 A. Yes.
13 Q. The last item you see is the 15c3
14 asset?
15 A. Yes.
16 Q. Can you explain from an accounting
17 standpoint why you needed to be comfortable that
18 the capped 769 million entitlement was not under
19 any material threat?
20 A. It was to insure there was no double
21 counting in our balance sheet. I don't
22 personally have a great deal of understanding of
23 the 15c3 accounts and how it operates. I just
24 wanted to make sure that none of the, none of
25 the value which was included in other items

Page 77

1 ROMAIN
2 would represent a double count with that
3 769 million dollars. That is me personally
4 based on a lack of a great deal of knowledge
5 about those items, rather than anything else,
6 and that was discussed, and the results of that
7 discussion were as represented on Exhibit 377A.
8 Q. When you say double counting, the
9 concern you had was that the 769 million here
10 might be in more than one place on your
11 acquisition balance sheet?
12 A. I needed to make sure that wasn't the
13 case, yes.
14 Q. Did you have any separate concern as
15 to the recoverability of the 15C3 asset?
16 A. I had -- I -- I had a wish to make
17 sure that the assets and number I was including
18 was the right one and a recoverable amount.
19 Yeah.
20 Q. What did you do to make sure that was
21 the case?
22 MR. HUME: To the extent that
23 answering that question requires divulging
24 communications with lawyers, I instruct the
25 witness not to answer.

Page 78	Page 80
<p>1 ROMAIN</p> <p>2 A. On that basis, there is nothing that I</p> <p>3 can think of to add to the response.</p> <p>4 Q. Did you make at one point a provision</p> <p>5 with respect to the -- to this asset, 15C3</p> <p>6 asset?</p> <p>7 A. Yes, I do recall it being shown lower</p> <p>8 amounts for a period before Barclays reached its</p> <p>9 final view on the appropriate carrying amount.</p> <p>10 Q. And what was the basis for that?</p> <p>11 MR. HUME: Basis for?</p> <p>12 Q. Making that provision?</p> <p>13 A. That was essentially that I as an</p> <p>14 accountant would -- heard that there were --</p> <p>15 there were discussions around the 15c3 assets in</p> <p>16 terms of it having not been delivered.</p> <p>17 Typically when you've got a security -- I'm</p> <p>18 sorry, not a security, where you have got a</p> <p>19 receivable which has not been delivered, and I</p> <p>20 personally didn't have a great sense of finality</p> <p>21 or great understanding of the discussions which</p> <p>22 were ongoing, and on a periodic basis I wrote</p> <p>23 those down with the knowledge I needed to</p> <p>24 finalize the view before we finalized the</p> <p>25 balance sheets.</p>	<p>1 ROMAIN</p> <p>2 recovery? How much certainty did you decide you</p> <p>3 would require in order to recognize an asset on</p> <p>4 that balance sheet?</p> <p>5 A. As I said, you recognize assets at</p> <p>6 fair value when you are satisfied that they</p> <p>7 exist. So for assets where we had done</p> <p>8 sufficient work to understand those assets, and</p> <p>9 their value, we included them. Where we didn't,</p> <p>10 we did not.</p> <p>11 So that there is no -- there is no</p> <p>12 sort of probability number which was involved in</p> <p>13 that.</p> <p>14 Q. So in recognizing the assets on the</p> <p>15 balance sheet, you did not undertake an analysis</p> <p>16 to determine whether the recoverability of each</p> <p>17 asset was more probable than not?</p> <p>18 MR. HUME: Objection, mischaracterizes</p> <p>19 the testimony.</p> <p>20 A. Yes, that's not quite the case, and</p> <p>21 the recoverability of an asset will be one of</p> <p>22 the facts which is taken into account in</p> <p>23 determining its fair value.</p> <p>24 Q. Did you do a probability assessment</p> <p>25 with respect to the 15c3 asset?</p>
Page 79	Page 81
<p>1 ROMAIN</p> <p>2 So it was written down on that basis</p> <p>3 for a period of time until the final view was</p> <p>4 reached, and then it was stated at the</p> <p>5 appropriate amount.</p> <p>6 Q. What is the threshold in terms of</p> <p>7 likelihood of recovery for recognition as</p> <p>8 opposed to nonrecognition on the financial</p> <p>9 statements?</p> <p>10 A. For acquisition accounting, it is fair</p> <p>11 value. So it's -- there is not a probable or</p> <p>12 not probable explicitly included in the</p> <p>13 accounting standards. It is more you recognize</p> <p>14 a fair value which will take into account</p> <p>15 uncertainties after. However, where you have</p> <p>16 got single large items, then whether you</p> <p>17 attribute a fair value to an item or not will</p> <p>18 often involve discussion around probability of</p> <p>19 receipt.</p> <p>20 But there is no hard and fast rule.</p> <p>21 It is a matter of judgment. But the underlying</p> <p>22 principle is fair value.</p> <p>23 Q. What was the threshold that Barclays</p> <p>24 applied in recognizing assets on the acquisition</p> <p>25 balance sheet in terms of probability of</p>	<p>1 ROMAIN</p> <p>2 MR. HUME: Objection. To the extent</p> <p>3 it calls for divulgence of privileged legal</p> <p>4 advice, I instruct the witness not to</p> <p>5 answer.</p> <p>6 A. On that basis, as I previously</p> <p>7 indicated, the recognition of that asset would</p> <p>8 reflect Barclays' view as to the appropriate</p> <p>9 fair value of that asset for inclusion in</p> <p>10 acquisition accounting.</p> <p>11 Q. And the question simply is, did you do</p> <p>12 an analysis as to whether Barclays -- it was</p> <p>13 probable that Barclays would obtain that asset?</p> <p>14 MR. HUME: You are asking this witness</p> <p>15 whether he did an analysis of whether we are</p> <p>16 going to win our legal dispute that we have</p> <p>17 with you?</p> <p>18 MR. MAGUIRE: The question is, did he</p> <p>19 do that or not? Did he do a probability</p> <p>20 analysis?</p> <p>21 MR. HUME: Separate from the lawyers.</p> <p>22 MR. MAGUIRE: Just asking if he did a</p> <p>23 probability analysis.</p> <p>24 MR. HUME: You are instructed not to</p> <p>25 answer to the extent the lawyers did an</p>

21 (Pages 78 to 81)

Page 82	Page 84
<p>1 ROMAIN</p> <p>2 analysis of their entitlement.</p> <p>3 Beyond that, I think he already has</p> <p>4 answered.</p> <p>5 Q. Sir, anything you need to say?</p> <p>6 A. I don't have anything I can add to</p> <p>7 that.</p> <p>8 Q. I notice that on the -- your draft</p> <p>9 acquisition balance sheet, at some stage, you</p> <p>10 refer to an OCC clearance box. I think that</p> <p>11 ultimately becomes OCC customer and clearing</p> <p>12 margin.</p> <p>13 A. Yes. The labels which are included</p> <p>14 alongside either option futures or OCC items in</p> <p>15 early versions would typically reflect at that</p> <p>16 stage the fact that very little work had been</p> <p>17 done on those from the finance perspective and</p> <p>18 from my perspective. So they may well be less</p> <p>19 than absolutely accurate characterizations of</p> <p>20 the nature of everything which is included in</p> <p>21 there. But that's because they are based on the</p> <p>22 level of information and understanding I had at</p> <p>23 any given date. Which is the case for all the</p> <p>24 iterations of the balance sheet.</p> <p>25 Q. We will mark as Exhibit 541A an e-mail</p>	<p>1 ROMAIN</p> <p>2 me about the PIM balance sheet. No, I don't</p> <p>3 recall that I had any discussions with them</p> <p>4 around that.</p> <p>5 Q. What about with respect to the 15c3</p> <p>6 assets? Did you have any discussions with the</p> <p>7 auditors about that?</p> <p>8 MR. HUME: Just for the record, that's</p> <p>9 not what note 5 refers to.</p> <p>10 MR. MAGUIRE: Understood.</p> <p>11 A. I am sorry, can you repeat the</p> <p>12 question.</p> <p>13 Q. Yeah. The 15C3 asset has a note 2</p> <p>14 beside it. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. It says, "Timing of receipt is</p> <p>17 uncertain and subject to SEC approval." Do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have any discussions with any</p> <p>21 of the auditors concerning that SEC approval</p> <p>22 requirement?</p> <p>23 A. No. I didn't have any discussions</p> <p>24 with them about that. But they may have asked</p> <p>25 me about the balance sheets, and they may have</p>
Page 83	Page 85
<p>1 ROMAIN</p> <p>2 from Robert Konowalchuk to Mr. Romain dated 25</p> <p>3 November, 2008.</p> <p>4 (Exhibit 541A, document Bates stamped</p> <p>5 BCI-EX-(S)110070 through 74 marked for</p> <p>6 identification, as of this date.)</p> <p>7 Q. Sir, if you turn to the second-to-last</p> <p>8 page, there is a draft acquisition balance sheet</p> <p>9 there.</p> <p>10 A. Yup.</p> <p>11 Q. I guess the last page with any text on</p> <p>12 it. And you will see the page before that has a</p> <p>13 similar acquisition balance sheet with some</p> <p>14 notes.</p> <p>15 A. This is -- the two schedules are the</p> <p>16 same acquisition balance sheet. It is the net</p> <p>17 and gross presentation.</p> <p>18 Q. Right.</p> <p>19 If you look at note 5, you see it</p> <p>20 says, "SEC agreement is required before amounts</p> <p>21 can be released"?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have any discussions with any</p> <p>24 of your auditors concerning that requirement?</p> <p>25 A. I don't think any auditors talked to</p>	<p>1 ROMAIN</p> <p>2 asked me about that number, but I wouldn't have</p> <p>3 been the right person to talk to them about SEC</p> <p>4 discussions. So no, I didn't.</p> <p>5 Q. We will mark as Exhibit 542A an e-mail</p> <p>6 from Mr. Romain to Mr. Clackson and others dated</p> <p>7 10 December, 2008.</p> <p>8 (Exhibit 542A, document Bates stamped</p> <p>9 BCI-EX-(S)110092 with attachment marked for</p> <p>10 identification, as of this date.)</p> <p>11 MR. HUME: I would like to make a</p> <p>12 statement for the record, if I could. The</p> <p>13 previous exhibit, and I think the one</p> <p>14 before, have this phrase about, "Timing of</p> <p>15 receipt is uncertain and subject to SEC</p> <p>16 approval."</p> <p>17 I need to reserve our right to</p> <p>18 determine whether or not that is potentially</p> <p>19 subject to a claw back, if it in any way</p> <p>20 relates to the -- relates to any legal</p> <p>21 advice at the time. And I will try to do</p> <p>22 that as promptly as possible.</p> <p>23 Q. So you sent Exhibit 542A?</p> <p>24 A. Yes.</p> <p>25 Q. And what were you referring to here?</p>

Page 86	Page 88
<p>1 ROMAIN</p> <p>2 A. So I was referring to the underlying</p> <p>3 schedule which shows two balance sheets. One is</p> <p>4 the balance sheet based on the best information</p> <p>5 I had at November month end, and the second was</p> <p>6 a sort of working balance sheet for, you know,</p> <p>7 what updates would need to be made to that</p> <p>8 version for eventual December month-end</p> <p>9 financial accounting.</p> <p>10 So making adjustments for additional</p> <p>11 information and potential adjustments which I</p> <p>12 had become aware of or worked on further between</p> <p>13 November month end and the 10th of December.</p> <p>14 Q. We will mark as Exhibit 543A an e-mail</p> <p>15 from Mr. Romain to Mr. Holloway dated 14</p> <p>16 December, 2008.</p> <p>17 (Exhibit 543A, document Bates stamped</p> <p>18 BCI-EX-(S)218500 through 501 with attachment</p> <p>19 marked for identification, as of this date.)</p> <p>20 Q. I am going to ask you about the</p> <p>21 attachment, which is a December 12 e-mail I</p> <p>22 believe you were copied on. Specifically on the</p> <p>23 second page of that, there is a section called</p> <p>24 "Bid Offer Spread."</p> <p>25 A. OK.</p>	<p>1 ROMAIN</p> <p>2 get them to our best estimate of bid, which is</p> <p>3 neither mid nor offer.</p> <p>4 Q. Is there a written protocol that</p> <p>5 describes the process that your technical people</p> <p>6 went through here in performing their</p> <p>7 valuations?</p> <p>8 A. There are valuation policies which are</p> <p>9 applied within the bank and which are applied in</p> <p>10 this process also.</p> <p>11 Q. Were there any exceptions to the</p> <p>12 company's valuation policies that were applied</p> <p>13 here?</p> <p>14 A. We valued, we valued the securities in</p> <p>15 line with those policies. I have not audited</p> <p>16 the work that was performed, but that was the</p> <p>17 objective and those were the policies that we</p> <p>18 apply for these valuations, as well as all</p> <p>19 others which were reflected in our year-end</p> <p>20 accounting.</p> <p>21 Q. That work was subject to audits by the</p> <p>22 external auditors; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what the external auditors</p> <p>25 did with respect to that process and the work</p>
Page 87	Page 89
<p>1 ROMAIN</p> <p>2 Q. The first sentence says that "the</p> <p>3 values that we received for equity prices are</p> <p>4 based on the last traded," and goes on to talk</p> <p>5 about an assumption that these are mids. What</p> <p>6 do you understand mids to be?</p> <p>7 A. This is part of the technical process</p> <p>8 under which our specialists determine the</p> <p>9 appropriate bid price, which is the price we are</p> <p>10 required to mark assets at. So I do not</p> <p>11 understand everything which is in Marcus'</p> <p>12 e-mail, but references to mids would mean mid</p> <p>13 price.</p> <p>14 Q. And you see that there is an</p> <p>15 assumption here that these are mids?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether anything was done</p> <p>18 to check whether that was an appropriate</p> <p>19 assumption?</p> <p>20 A. I don't know what checks were made.</p> <p>21 However, as Marcus goes on to clarify, we are</p> <p>22 required to mark the assets at bid price in any</p> <p>23 case. So whether the prices were mid or offer,</p> <p>24 as he suggested a possible alternative, we would</p> <p>25 still need to make an appropriate adjustment to</p>	<p>1 ROMAIN</p> <p>2 that had been done?</p> <p>3 A. No.</p> <p>4 Q. Do you know whether that work was also</p> <p>5 subject to any review by internal audit?</p> <p>6 A. I don't know.</p> <p>7 Q. And you see the first component that</p> <p>8 Mr. Morton spoke to, as to "time before Barclays</p> <p>9 perfected ownership of the assets and was able</p> <p>10 to trade"?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know whether there was any</p> <p>13 adjustment made to the fair value of the assets</p> <p>14 based on this timing issue?</p> <p>15 A. No, there was not.</p> <p>16 Q. So he mentioned a number that's a</p> <p>17 little north of 500 million dollars. There was</p> <p>18 no adjustment made with respect to timing.</p> <p>19 A. The issue was being discussed with the</p> <p>20 auditors as regards the appropriate valuation</p> <p>21 date, and the position which was agreed on that</p> <p>22 was that they should be valued at bid price as</p> <p>23 at the closing date.</p> <p>24 So at this point, so December 12 and</p> <p>25 also December 14, we were engaged in a</p>

Page 90	Page 92
<p>1 ROMAIN</p> <p>2 discussion with their auditors as to the</p> <p>3 appropriate valuation date. And that's the</p> <p>4 context for Marcus' e-mail, but the conclusion</p> <p>5 was they were valued without adjusting for any</p> <p>6 period after the close date that it took us to</p> <p>7 perfect our control or management of the assets.</p> <p>8 Q. We'll mark 544A as a document Bates</p> <p>9 stamped BCI-EX-(S)00110108 through 112.</p> <p>10 (Exhibit 544A, document Bates stamped</p> <p>11 BCI-EX-(S)00110108 through 112 marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q. Sir, can you tell me, do you recognize</p> <p>14 Exhibit 544A?</p> <p>15 A. Yes, I do.</p> <p>16 Q. What is it?</p> <p>17 A. This was a document which PWC put</p> <p>18 together as part of our discussion with them as</p> <p>19 to the appropriate valuation date. To aid those</p> <p>20 discussions, they put together a summary of</p> <p>21 their understanding of what happened when.</p> <p>22 And -- yeah, so that's what that document is.</p> <p>23 Q. Under Thursday, September 18, there is</p> <p>24 a reference to securities received as</p> <p>25 collateral. The first two bullets refer to</p>	<p>1 ROMAIN</p> <p>2 Barclays to DTC.</p> <p>3 Q. So that means that it wouldn't affect</p> <p>4 the opening balance sheet?</p> <p>5 A. That's correct.</p> <p>6 Q. And that the result of this</p> <p>7 transaction would be reflected as a post balance</p> <p>8 sheet trade?</p> <p>9 A. That's correct.</p> <p>10 Q. Was there a loss or a profit</p> <p>11 recognized on this transaction?</p> <p>12 A. The sale price was very similar to the</p> <p>13 price -- to the fair value for acquisition</p> <p>14 accounting, and, yes, so the fair value for the</p> <p>15 securities included in Exhibit 377A was</p> <p>16 1732 million. And they were sold under the</p> <p>17 honest broker program for 1715 million. So that</p> <p>18 is a loss of 17 million, which I guess is about</p> <p>19 1 percent.</p> <p>20 Q. And you're reading from --</p> <p>21 A. I'm reading from my notes, which is--</p> <p>22 Q. Exhibit 534A?</p> <p>23 A. Yes. 534A.</p> <p>24 Q. And can you tell me where on your</p> <p>25 notes is the topic you are reading from?</p>
Page 91	Page 93
<p>1 ROMAIN</p> <p>2 28 billion of wirable securities and then 14 to</p> <p>3 15 billion that was moved from being pledged to</p> <p>4 DTC. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Whose valuations were used there?</p> <p>7 A. I don't know.</p> <p>8 Q. If you turn to the second-to-last page</p> <p>9 just above Thursday, September 25.</p> <p>10 A. Yup.</p> <p>11 Q. It starts on the previous page. It</p> <p>12 deals with the honest broker program.</p> <p>13 A. OK, yeah.</p> <p>14 Q. Did this honest broker program</p> <p>15 transaction with DTC have any impact on the</p> <p>16 balance sheet --</p> <p>17 A. No.</p> <p>18 Q. -- Exhibit 377A?</p> <p>19 Can you explain why?</p> <p>20 A. We -- in terms of for accounting</p> <p>21 purposes, this was raised to me sometime after</p> <p>22 it occurred and -- as well as this memo here,</p> <p>23 and determined that the most appropriate</p> <p>24 representation was that this was a</p> <p>25 post-acquisition sale of securities from</p>	<p>1 ROMAIN</p> <p>2 A. Yes. It is 34B and 34C at the top of</p> <p>3 the fifth page.</p> <p>4 Q. We don't need to mark this. I am</p> <p>5 going to show you just one page I want you to</p> <p>6 look at in Barclays' annual report, 2008 annual</p> <p>7 report, page 235.</p> <p>8 A. OK.</p> <p>9 Q. You will see, sir, at the bottom of</p> <p>10 the table, there is a section that begins, "The</p> <p>11 acquired assets and liabilities summarized in</p> <p>12 the table above." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And the second sentence says, "For</p> <p>15 this reason, it is not practical to reliably</p> <p>16 determine the carrying amount of the assets and</p> <p>17 liabilities in the pre-acquisition books and</p> <p>18 records of Lehman Brothers."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. By carrying amount, do you understand</p> <p>22 that to be the book value?</p> <p>23 MR. HUME: Objection, vague and</p> <p>24 ambiguous.</p> <p>25 A. Carrying amount would mean the amounts</p>

Page 94

1 ROMAIN
2 at which those items were stated in the books
3 and records of Lehman prior to acquisition.
4 Q. Prior to September 22?
5 A. Yes.
6 Q. And do you know whether Barclays, in
7 fact, had access to the books and records of
8 Lehman?
9 MR. HUME: Had at what time?
10 Q. Following the September 22
11 acquisition?
12 A. I don't know.
13 Q. Do you know whether it was in fact
14 practical to determine the book value of the
15 assets and liabilities in Lehman's books?
16 MR. HUME: Objection, vague as to what
17 time.
18 A. It's important to distinguish between
19 practical and possible. There is very little
20 which is impossible, but the disclosure
21 requirement that's there to satisfy is in
22 accounting standards, which basically says that
23 you should include that information unless it is
24 not practical to do so.
25 And practical is typically -- for

Page 95

1 ROMAIN
2 reporting purposes is typically viewed as
3 including cost-benefits. So if it was -- if it
4 were to take a lot of effort disproportionate to
5 benefits of including the disclosure for
6 financial reporting purposes, even though
7 neither of those concepts can be quantitatively
8 measured, then you don't include it, and it is
9 typical for acquisitions of this nature that you
10 would not include that.
11 Q. And do you in fact know whether it was
12 practical to get the carrying value or book
13 value of the assets from Lehman's records?
14 A. In the context I've just described in
15 terms of including cost-benefit, it was not
16 practical.
17 Q. How do you know that?
18 A. Because I was involved in the
19 discussions around that.
20 Q. And can you tell me what you know of
21 those discussions?
22 A. One of those discussions is that to --
23 that setting aside questions of access to books
24 and records, which we really didn't get into,
25 even if we had perfect access, it would have

Page 96

1 ROMAIN
2 taken a lot of time to extract the carry amounts
3 of all of the acquired assets and liabilities
4 from the assets and liabilities which were not
5 subject to the acquisition.
6 And the amount of time that it would
7 have taken was viewed as, by far excessive to
8 what we would ever consider taking to fulfill
9 that disclosure requirement.
10 MR. HUME: Is there a reason you don't
11 want to make that an exhibit, Bill?
12 MR. MAGUIRE: What?
13 MR. HUME: The one you just showed
14 him.
15 MR. MAGUIRE: It is a public record.
16 It is also very thick. But I don't think
17 there is any dispute as to what the 2008
18 report was. It's a matter of judicial
19 notice.
20 MR. HUME: I think it is just good
21 order to keep a copy of it. I'm not making
22 an issue of it.
23 MR. MAGUIRE: I don't see any reason
24 to. If you want to, I'm happy to, but we
25 have already got a pretty big record.

Page 97

1 ROMAIN
2 MR. HUME: Do you have a copy for me?
3 MS. HASSAN: Yes.
4 Q. We will mark as Exhibit 545A an e-mail
5 from Mr. Romain to Mr. Morton and others dated
6 10 January, 2009.
7 (Exhibit 545A, document Bates stamped
8 BCI-EX-(S)110133 through 34 marked for
9 identification, as of this date.).
10 Q. You sent this e-mail, sir?
11 A. Yes.
12 Q. You note that, just before the end,
13 you note that there are other potential assets
14 which do not have sufficient certainty of
15 recoverability. Do you see that?
16 A. Yup.
17 Q. What was the level of certainty that
18 you felt was necessary for recognition?
19 A. I guess I need to just go back to the
20 previous answer. There is no fixed level of
21 certainty for acquisition accounting. The
22 concept is fair value. And in determining fair
23 value or whether to attribute to fair value, one
24 of the things we would consider is our knowledge
25 around the recoverability of assets, which was

Page 98

1 ROMAIN
2 one of the things which would have fed into
3 that.
4 Q. If you turn to the acquisition balance
5 sheet, you will see under the C3 asset it has
6 0.19. Is that 190 million dollars?
7 A. Yeah.
8 Q. And then how is that amount arrived
9 at?
10 A. At that time, that was 25 percent of
11 the total amount, being the percentage that we
12 were carrying some of our sort of general
13 non-acquisition related Lehman claims at. As
14 mentioned earlier, that was shown at that level
15 for a time, I'm not sure how long, when from an
16 accounting point of view, I and others didn't
17 think we knew enough about the item to reach a
18 final determination on the appropriate carry
19 amount.
20 We shortly thereafter reached a view
21 as a bank as to the appropriate carry amount,
22 and that's what guided the final acquisition
23 accounting.
24 Q. So mathematically, the .19 here is
25 25 percent of the .77?

Page 99

1 ROMAIN
2 A. Mathematically, that's what that
3 number is.
4 Q. And when you refer to general
5 non-acquisition related Lehman claims, what were
6 you referring to?
7 A. Where Barclays traded with Lehman and
8 ended up with a claim against the bankruptcy
9 estate, because it was owed cash at the time
10 that the organization went into bankruptcy. And
11 as discussed, that was not viewed as the
12 appropriate measurement basis in our final
13 acquisition accounting.
14 Q. So your final acquisition accounting,
15 you changed that from 25 percent to 100 percent?
16 A. The final acquisition accounting
17 included 100 percent of the 769 million, yes.
18 Q. We will mark as Exhibit 546A an e-mail
19 from Lee Howell to Gary Romain and Iain Cooper.
20 (Exhibit 546A, document Bates stamped
21 BCI-EX-(S)110162 through 63 with attachment
22 marked for identification, as of this date.)
23 Q. Sir, Lee Howell refers to -- he tells
24 you about the conversation he needs to have with
25 PricewaterhouseCoopers concerning the split

Page 100

1 ROMAIN
2 between acquisition and post acquisition. What
3 did you understand that to refer to?
4 A. Yeah, I understood that to refer to
5 the cost of closing out LBF positions which were
6 held in the OCC 084 accounts and whether we
7 should view that as a cost of the acquisition or
8 post-acquisition costs.
9 Q. What was the financial statement
10 impact of that question?
11 A. If it was a cost of acquisition, it
12 would be included in P&L as a reduction in the
13 negative goodwill amount. If it wasn't, it
14 would be included at the same amount also in
15 P&L, but would be included in -- probably in a
16 trading profit line instead.
17 So it is about which line item in the
18 P&L that cost appears in.
19 Q. And then you asked for update of
20 balance sheet breakdowns after adjustments had
21 been made, right?
22 A. Yeah.
23 Q. If we look at the attachment.
24 A. Yeah.
25 Q. Do I understand that the first column

Page 101

1 ROMAIN
2 represents the 19th of September on a net basis,
3 and that the net is a net of the gross amount of
4 assets represented by the second column and the
5 gross amount of liabilities, which is the third
6 column?
7 A. The -- yeah, the first column is
8 the -- is the overall futures balance sheet,
9 which was reflected in Exhibit 377A. And then
10 there is a gross up, which is required for
11 accounting purposes to show assets and
12 liabilities separately. They are the two
13 numbers which you will see in the gross tab in
14 Exhibit 377A.
15 Q. And the gross amount of the assets,
16 3.783 billion, that appears on Exhibit 377A?
17 A. In the third tab of 377A, the 3.783
18 number appears in cell F20, and the 2.605
19 appears in cell E44.
20 Q. And that corresponds with the gross
21 amount of the liabilities on the overall futures
22 balance sheet?
23 A. That's the financial statement
24 presentation, yeah, so the gross, the gross
25 after the futures balance sheet.

Page 102

1 ROMAIN
2 Q. Does the net number on the overall
3 futures balance sheet for the 19th of September,
4 that 1.178 billion dollar number, does that
5 appear anywhere in Exhibit 377A?
6 A. So on the second page of 377A, which
7 is the summary acquisition balance sheet, that
8 figure is included in cell C17.
9 Q. Now, if we look at the overall futures
10 balance sheet, the cash amount there, can you
11 tell me where that cash is?
12 MR. HUME: This is on Exhibit 546A?
13 MR. MAGUIRE: Yes.
14 A. It is, yeah. I just want to check so
15 I can be definitive.
16 Q. Sure.
17 MR. HUME: I am going to object to the
18 question, as I think the question is unclear
19 and ambiguous.
20 A. I don't know where it is, no, cash
21 being fungible, but it has substantially been
22 delivered to Barclays. I think there may be a
23 small amount which was not delivered to -- but
24 if so, that would be in the range of 10 to 15
25 million dollars, but substantially all of the

Page 103

1 ROMAIN
2 cash balance was delivered.
3 Q. If you look at your notes,
4 Exhibit 399A, there is the handwritten notes.
5 A. Yes.
6 Q. If you look at the second page, around
7 the middle of the page, this is just above
8 futures, and you have a reference to cash there,
9 1.375 billion in cash?
10 A. Yes.
11 Q. Would you tell me whether that is
12 different from any of the 811 million dollars of
13 cash that's on the overall futures balance
14 sheet.
15 A. Yes, it is different.
16 Q. And can you explain how.
17 A. That's the amount which relates to
18 options, not futures.
19 Q. So the cash that relates to options at
20 the OCC is 1.375 billion dollars?
21 A. That was -- I mean I don't have the
22 number on hand, but it certainly is in that
23 area, and based on also the notes there, which I
24 was short at the time, yes, it's that or a
25 number very close to it.

Page 104

1 ROMAIN
2 Q. And the 811 million dollars that's
3 reflected on the overall futures balance sheet
4 is cash that's separate from that that relates
5 to the futures business?
6 A. That's correct.
7 Q. The next item on the overall futures
8 balance sheet are mutual funds?
9 A. Yes.
10 Q. Can you tell me whether they are
11 reflected on any of the exhibits to the James
12 declaration that you reviewed with us earlier?
13 A. Yes. They're not -- I'm not sure --
14 they are. But the thing I'm not sure of right
15 now is the reconciliation between the item in
16 Exhibit 2, which is 1 billion dollars, and the
17 amount in the acquisition balance sheet of
18 1.385 billion dollars.
19 As I sit here right now, there is a
20 reason for the difference between the two, but I
21 don't recollect it.
22 Q. With the exception of that difference,
23 those two numbers correspond to the same
24 categories of assets?
25 A. That's correct.

Page 105

1 ROMAIN
2 Q. And what about with respect to at
3 T bills? Is that reflected on any of the
4 exhibits of Ms. James' declaration?
5 A. Yes, they are. They are included
6 within other items. As you see from the futures
7 breakdown there, that is marginal cash which is
8 held with various exchanges and brokers. The
9 exhibits to Liz James' includes those items in
10 the relevant broker or, you know, whether it is
11 foreign customer or prop, proprietary.
12 Liz James' exhibits do not split the
13 form in which that collateral was held to show
14 what was held in T bills or in any other form.
15 But they are included within Liz's items.
16 Q. What about domestic exchanges?
17 A. Collateral held at domestic exchanges
18 is not included in the exhibits to Liz James'
19 testimony, the collateral. So that net
20 404 million dollars is collateral which is --
21 which at the time of acquisition was placed with
22 domestic exchanges and is not included in the
23 exhibits, and I fed that back and Liz will deal
24 with that in her deposition.
25 Q. Now, when you say 404, you are

Page 106

1 ROMAIN
2 referring to the \$403,733,010?
3 A. That's correct.
4 Q. What about foreign brokers?
5 A. Yes. Again, that's included in the
6 relevant foreign brokers numbers.
7 Q. In her exhibits?
8 A. In her exhibits.
9 Q. What's meant by house positions?
10 A. Proprietary positions.
11 Q. And then Lehman affiliates?
12 A. That's the same. That's also
13 included.
14 Q. That's included in the --
15 A. In the Liz James exhibits.
16 Q. In the Liz James exhibits.
17 And the receivable under Lehman
18 affiliates, what does that represent?
19 A. That represents margin which was held
20 with Lehman affiliates. So placed by LBI with
21 Lehman affiliates who had exchange memberships
22 in those jurisdictions.
23 And that's also included in the
24 exhibits to Liz James' declaration.
25 Q. What's the payable?

Page 107

1 ROMAIN
2 A. There was also payable to certain
3 affiliates. I'm not sure -- I'm not sure what
4 that represented.
5 There is backing which is -- it is
6 not -- it would not be included because it
7 wasn't a receivable. All of Liz James' are
8 basically collateral which was due to be
9 delivered to Barclays.
10 There were also some payables to
11 various exchanges where LBI's account with them
12 was in a payable situation. In terms of the
13 trades which led to that position
14 pre-acquisition, I don't know what they are.
15 Q. So if you wanted to find out what that
16 payable represents, how would you -- what would
17 you do?
18 A. I'd go back to either backing -- I'd
19 go back to the underlying work that was done to
20 put together the futures balance sheets. Each
21 of these assets and liability items, as you
22 would expect, has components.
23 Q. Sure. And who has that? Who did the
24 work of putting this together?
25 A. Lee Howell.

Page 108

1 ROMAIN
2 Q. Now, finally there is a provision, do
3 you see that, for 168.8 million?
4 A. Yeah.
5 Q. What's that?
6 A. That is a part of the 470 million
7 dollars that I mentioned earlier for Lehman
8 affiliates other than Japan and Singapore. So
9 288 million includes some items which we didn't
10 include on the acquisition balance sheet. So
11 that provision was to deduct closed items, so
12 they didn't -- they didn't appear on the
13 acquisition balance sheet.
14 Q. Is that provision reflected anywhere
15 on your handwritten notes?
16 A. It is part of the 460 million items,
17 assets not received and not on balance sheet.
18 Q. When you say part of, is the 460 a net
19 of this provision or --
20 A. No. The 169 is part of the 460. So
21 there were -- in the way that this is presented,
22 some of the items were not recognized, just
23 weren't included on here in the first place.
24 Some of them were included in the 288 and
25 therefore need to be deducted.

Page 109

1 ROMAIN
2 So the 168 is a subset of 460. The
3 rest of it doesn't appear at all.
4 Q. OK. So the 460 represents futures
5 collateral at affiliates that is not recorded on
6 the acquisition balance sheet?
7 A. Exactly.
8 Q. And with respect to that, there is --
9 I suppose that breaks up into all kinds of
10 different affiliates?
11 A. Yup.
12 Q. And you're saying that one component
13 of that 460 is this provision for about 169
14 million dollars?
15 A. Yes.
16 Q. OK. And I assume Lee Howell will be
17 the person who will have the individual
18 components of the breakdown of that?
19 MR. HUME: Objection, vague.
20 A. The breakdown of the components is --
21 of the 470 are included in Liz James'
22 deposition. The breakdown of -- essentially
23 there is two ways of not including something in
24 the balance sheet. You either don't put it into
25 this summary at all, or you put it in, in the

Page 110

1 ROMAIN
2 288 million, and then deduct it.
3 So mechanically which of the items
4 were excluded in either of those two ways is
5 really just arithmetic. We could have put all
6 of it in there and then deducted the whole 470
7 or put none of it in there and you would end up
8 with the same number, so it is just arithmetic
9 really. The breakdown of the total 470 not
10 included is in Liz James' deposition.
11 MR. HUME: Declaration.
12 A. Declaration, sorry.
13 Q. You have completely lost me, I'm
14 afraid. It is not your fault. It is late in
15 the morning.
16 You referred to 470, and I see a 460
17 in front of me on your handwritten notes.
18 A. 470 is I think that -- the amount, the
19 amount as at the end of this year. I think
20 there might have been some accrued interest, so
21 it might be a couple million higher, so to the
22 nearest ten million, I was rounding up to 470 in
23 my mind.
24 Q. That's my first question: We are
25 talking about the same thing?

Page 111

1 ROMAIN
2 A. We're talking about the same item. So
3 if we talk about 460, to avoid confusion, we
4 didn't want to recognize it on the balance
5 sheet, based on the position we were in, in
6 February, 2009. So what we had to insure is
7 that none of that 460 appeared in the 3,783,128.
8 So to insure that, there are two ways
9 of insuring that that 460 is not included there.
10 One is if we just don't include it at all. And
11 some of the items just weren't included in this
12 breakdown in the first place. However, some of
13 them were included in the 288 million
14 receivable, and therefore, they needed to be
15 deducted.
16 Q. And the assets that were included in
17 the overall futures balance sheet amounted to
18 168.8 million? No? OK.
19 A. No. The 168.8 were assets which we
20 did not wish to include in the acquisition
21 balance sheet. So I need to deduct.
22 Q. I understand that. But I thought this
23 168 was part of the 460.
24 A. It is, yes.
25 Q. And the rest of the 460 wasn't

Page 112

1 ROMAIN
2 anywhere on the overall futures balance sheet?
3 A. It wasn't in this breakdown of it.
4 That's right. Yeah.
5 Q. So the reason for this provision of
6 168.8 is that that corresponds to the amount of
7 futures collateral at affiliates that had been
8 included on the overall futures balance sheet?
9 A. That's right.
10 Q. Which you did not want to recognize?
11 A. That's right.
12 Q. And the details of that breakout Lee
13 Howell would have?
14 MR. HUME: Objection, vague.
15 A. In terms of the split between what
16 wasn't included in this particular summary and
17 what was included and then deducted, yeah, Lee
18 would have that.
19 Q. The next item is customer balances.
20 A. Yeah.
21 Q. And what do they represent, these
22 debits and credits?
23 A. They represent the payables and
24 receivables to customers.
25 Q. And can you tell me which is which?

Page 113

1 ROMAIN
2 A. So customer accounts which were in a
3 receivable position are the 315 million, and
4 customer accounts which were in a payable
5 position is the 2.335.
6 Q. And this is from the perspective of
7 Barclays?
8 A. Yes.
9 Q. So the customer receivable, this means
10 that customers owe Barclays 315 million dollars?
11 A. Yes.
12 Q. And Barclays owed customers
13 2.335 billion dollars.
14 A. Yes.
15 Q. For what did Barclays owe customers
16 2.33 billion dollars?
17 A. In order to be able to quantify that,
18 you would have to go through each customer
19 account and look at activity, because any
20 customer account, it is a running total of
21 items, of payables and receivables.
22 So the largest two items which you
23 would expect to see in a customer account will
24 be payables in relation to collateral they
25 placed with the broker to secure their

Page 114	Page 116
<p>1 ROMAIN</p> <p>2 obligations, and the other main item you would</p> <p>3 expect to see in customer accounts is the fair</p> <p>4 value of their open futures positions with the</p> <p>5 broker.</p> <p>6 There would be other smaller items</p> <p>7 like accrued fees, and I'm sure there are other</p> <p>8 smaller items which would also factor into their</p> <p>9 accounts balance.</p> <p>10 Q. And you show the accrued fees</p> <p>11 separately here?</p> <p>12 A. It is on a different line here, but</p> <p>13 yes, so you could combine those two if you</p> <p>14 wished. But they are both, they are both --</p> <p>15 actually I'm not sure what -- I shouldn't</p> <p>16 misspeak. I'm not entirely sure what that</p> <p>17 7 million item is, because it is too small for</p> <p>18 me to have spent much attention on.</p> <p>19 Q. You are referring to the accrued fees?</p> <p>20 A. The accrued fees, yeah.</p> <p>21 Q. And then after that -- so what is net</p> <p>22 assets then?</p> <p>23 A. Net assets? That's the net of the</p> <p>24 assets and liabilities in the futures balance</p> <p>25 sheet before the deduction of a couple of other</p>	<p>1 ROMAIN</p> <p>2 recognized. We recognize that as a loss in P&L.</p> <p>3 Q. If you could look at the cash amount</p> <p>4 that's at the top, 811 million dollars. Does</p> <p>5 that have any relationship to the cash that's</p> <p>6 shown on Exhibit 2 of Ms. James' declaration?</p> <p>7 A. Yes.</p> <p>8 Q. How does that correspond?</p> <p>9 A. It is the same item. As I say, the --</p> <p>10 there is an explanation for the differences</p> <p>11 between the cash and mutual and money market</p> <p>12 fund items, but they are the same item. I don't</p> <p>13 recall, I don't recall the precise differences</p> <p>14 at this time.</p> <p>15 Q. So you can't explain the precise</p> <p>16 reconciliation between the 871 million on</p> <p>17 Exhibit 2 of her declaration and 811 million on</p> <p>18 Exhibit 546A, but you're comfortable that those</p> <p>19 numbers can be reconciled?</p> <p>20 A. That's correct.</p> <p>21 MR. HUME: It is 1:30. Can we take a</p> <p>22 break for lunch?</p> <p>23 MS. HASSAN: It is set up.</p> <p>24 MR. MAGUIRE: OK, if you want to take</p> <p>25 a break now, that's fine.</p>
Page 115	Page 117
<p>1 ROMAIN</p> <p>2 items, the largest of which is the one mentioned</p> <p>3 a little while ago, which was the cost of -- no,</p> <p>4 no -- yeah, that's right. It was the cost of</p> <p>5 closing out the affiliate positions in the 084</p> <p>6 account, which at that time was -- in the end</p> <p>7 ended up being, I think, 36 million, but it was</p> <p>8 something around there. So we also viewed that</p> <p>9 as being a cost of acquisition and deducted</p> <p>10 that. So that's the OCC loss just below net</p> <p>11 assets.</p> <p>12 Q. I'm sorry, what was the OCC loss? How</p> <p>13 did that come about?</p> <p>14 A. That came about because in the -- I</p> <p>15 think it was initially in the 084 -- prior to</p> <p>16 the acquisition, in the 084F account at the OCC,</p> <p>17 there were -- that account didn't have any LBI</p> <p>18 proprietary positions. It only included LBI</p> <p>19 affiliate positions, which upon acquisition were</p> <p>20 transferred into customer accounts, and then</p> <p>21 closed out at a cost of approximately 40 million</p> <p>22 dollars.</p> <p>23 Q. Does Barclays have any payable or</p> <p>24 receivable associated with that loss?</p> <p>25 A. No. Not -- we haven't got anything</p>	<p>1 ROMAIN</p> <p>2 MR. HUME: OK.</p> <p>3 (Luncheon recess taken at 1:27 p.m.)</p> <p>4 (Continued on next page)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 118

1 ROMAIN
2 Q. Sir, we have been going through
3 Exhibit 546A. The overall futures acquisition,
4 futures balance sheet. Is there a similar
5 balance sheet showing the overall options
6 position?
7 A. There are underlying calculations
8 that -- it is not in the same format. In terms
9 of the backing for the underlying numbers for
10 the margin. It is -- the OCC statement for the
11 relevant date is the backing and the numbers
12 come straight from that. And for the
13 derivative, they required valuation much in the
14 same way as the schedule A assets require
15 valuation.
16 So the backing for that is a large
17 spreadsheet which is a CUSIP-by-CUSIP listing of
18 the option positions which totals to the option
19 valuation.
20 Q. Have you seen that spreadsheet?
21 A. Yes.
22 Q. What is the total result of the
23 derivatives, the options derivatives position?
24 A. The options are a liability of 1.03
25 billion. It is a little bit of rounding, but

Page 119

1 ROMAIN
2 yeah.
3 Q. And where is that 1.03 on the
4 acquisition balance sheet?
5 A. Oh. Yes, so on the second page of
6 Exhibit 377A, it is included within -- it is
7 included within cell C14, and in the third page
8 of gross version is included in the cell E42.
9 Q. And E42 says exchange-traded options
10 derivative MTM. Is that mark to market?
11 A. Mark to market, yes.
12 Q. That is an amount of 1.1 billion?
13 A. Yes. That item also includes the cost
14 of closing out affiliate positions, affiliate
15 OCC positions which -- well, the total cost was
16 104 million dollars. In our acquisition
17 accounting, we had written the receivable from
18 LBI down to 25 percent which was a 77 million
19 expense. We actually have now written it off
20 completely. So we recorded the additional 28
21 million I think in 2009 P&L.
22 Q. So this reflects 75 percent of that
23 104 million?
24 A. Yes.
25 Q. Plus the 1.03 billion?

Page 120

1 ROMAIN
2 A. Yes.
3 Q. For the actual positions?
4 A. Yes.
5 Q. And those positions, what exchanges,
6 what options exchanges were they at? That
7 covers -- let me strike that.
8 That covers all the Lehman's options
9 business at the OCC and any other exchange, is
10 that right?
11 A. That includes the positions in the
12 073 -- 074 and 277 accounts, the OCC. I'm not
13 aware of any other positions that were included
14 in the acquisition balance sheet or in the
15 acquisition, but that is -- in terms of -- in
16 terms of options.
17 But certainly that is what that item
18 represents. It is OCC, OCC options.
19 Q. If you turn to your notes, your
20 typewritten notes for today's deposition, topic
21 43. If you go to 43G.
22 A. Yeah.
23 Q. If we look for the derivatives
24 positions themselves as opposed to the margin or
25 the collateral, where do we find them on the

Page 121

1 ROMAIN
2 acquisition balance sheet?
3 A. Excuse me, sorry.
4 Q. Do you see the topic G talks to margin
5 collateral and derivatives positions at foreign
6 exchanges?
7 A. Yes.
8 Q. With respect to -- with respect not to
9 the margin or collateral, but the positions
10 themselves, where do we find them on the
11 acquisition balance sheet?
12 A. The -- well, the -- are we talking
13 about the options or the futures now?
14 Q. You may have to break it out for us,
15 but what I want ultimately is the total for
16 options and futures for derivatives and then the
17 two components.
18 WITNESS' ATTORNEY: G is the foreign
19 exchanges?
20 A. Yeah, that's right. So in terms of
21 just foreign exchanges, the open trade value, it
22 was something which was difficult to pull
23 together and had some estimation in the process,
24 but we did an exercise to get our best number.
25 Because the thing with the open trades is that

Page 122

1 ROMAIN
2 they are included within the overall balance
3 with customers and with exchanges.
4 So for the OCC options, that was
5 obviously with the OCC, so not foreign. For the
6 futures, what was the net? That was
7 approximately 154 million dollars. Negative
8 which is as included in the notes under G.
9 Q. And you are referring to a sentence
10 that says, "The open trade value of the customer
11 positions traded on foreign exchanges on certain
12 non-OCC cleared domestic exchanges as of the
13 closing was approximately a negative 154
14 million" --
15 A. The overall value is zero, obviously,
16 because it was customer business. So there is
17 154 million with customers and then we have
18 offsetting trades with the exchanges which we
19 deposited 154 million dollars.
20 Q. Can you do that more slowly or explain
21 that to me.
22 A. For customer positions, to look at the
23 overall value of the positions, you have got the
24 value of the trade between -- well,
25 preacquisition between LBI and the customer

Page 123

1 ROMAIN
2 which will be a certain amount and the overall
3 amount was negative 154 million dollars and you
4 will have the offsetting trade with the exchange
5 which will be equal and opposite to that.
6 Q. So in terms of taking the two equal
7 and offsetting trades -- maybe trade isn't the
8 right word --
9 A. Open derivative positions.
10 Q. OK. If we take first the position
11 between the customer and Lehman as between the
12 customers and Lehman, you're saying that the
13 result, the overall open trade value was a
14 negative 154 million?
15 A. That's correct.
16 Q. Then if we look at the offsetting
17 position between Lehman and the exchange, that
18 was, again, a negative equal and opposite, an
19 offsetting 154 million?
20 A. Yeah. As I say, we had to do -- we
21 looked into this because it was one of the
22 things which was asked about and it is not
23 something to just -- that can easily be picked
24 up because the -- to do it 100 percent
25 accurately would require us to go through each

Page 124

1 ROMAIN
2 customer account and break it up between margin
3 open derivative positions and other. So there
4 was some estimation and assumptions involved in
5 the process. So it wouldn't -- I wouldn't be
6 saying that that number is absolutely accurate.
7 Q. That's the best estimate?
8 A. That's our best estimate.
9 Q. It refers to not only foreign
10 exchanges, but certain non-OCC cleared domestic
11 exchanges. Can you tell me what that referred
12 to, non-OCC cleared domestic exchanges?
13 A. The main one was the CME.
14 Q. Do you know whether this margin at the
15 CME, that's included on the acquisition balance
16 sheet?
17 A. There is margin. Yes. Yes. There
18 was -- I don't have the exact figure, but the
19 total amount of the margin receivable -- the
20 margin that had been pledged at domestic
21 exchanges to secure LBI's obligations was 400
22 million dollars. It may have been sort of 404,
23 I think. The majority of that was CME. I don't
24 recall the exact number.
25 Q. Do you know -- I assume all of that is

Page 125

1 ROMAIN
2 on the acquisition balance sheet?
3 A. That's correct.
4 Q. Do you know what clearing fund was on
5 the -- was at CME, Chicago Mercantile Exchange?
6 A. No, I don't know.
7 Q. If we broaden it to all the domestic
8 exchanges, do you know, taking them as whole,
9 what the total clearing fund was?
10 A. No. For accounting purposes, this --
11 that distinction didn't feed in.
12 Q. Now, what about at the OCC? Do you
13 know what the clearing fund was at the OCC?
14 A. No, no. It is not something which I
15 have a great deal of knowledge about.
16 Q. Do you know whether the total clearing
17 fund at all of the foreign and domestic
18 exchanges is reflected on the acquisition
19 balance sheet?
20 A. I'm -- I don't know. I mean, I guess
21 I'm not -- I'm not too cognizant of how -- you
22 know, how the clearing funds fit into the
23 picture to be honest. I'm aware of the amount
24 of collateral which was placed with exchanges
25 and therefore needs to be recognized as a

Page 126

1 ROMAIN
2 receivable. But in terms of the mechanics and
3 how that fits in, I don't know.
4 Q. If you needed to find out what the
5 total amount of a clearing fund was across all
6 the domestic and foreign exchanges that has been
7 recognized on the balance sheet, on the
8 acquisition balance sheet, how would you
9 determine that?
10 A. I'm not sure.
11 Q. Do you know who would know that?
12 A. Sitting here now, no, I don't. No.
13 WITNESS' ATTORNEY: Did you use the
14 term "clearing fund" in your 30(b)(6)?
15 MR. OXFORD: I think it is part of the
16 definition of margin.
17 WITNESS' ATTORNEY: Then that should
18 be made clear in the question because I
19 don't think the question could be answered.
20 If it is included in the definition of
21 margin, the witness can answer the question
22 and I think that the predicate for that
23 question wasn't made clear to the witness.
24 Clear funds included in margin, then this
25 witness has the numbers.

Page 127

1 ROMAIN
2 Q. Do you understand -- let me --
3 WITNESS' ATTORNEY: It is not a
4 question of what he understands clearing
5 fund to be. That wasn't a 30(b)(6) topic.
6 MR. MAGUIRE: I am not asking for a
7 definition of clearing funds. I simply want
8 to know where the clearing fund is.
9 WITNESS' ATTORNEY: The 30(b)(6)
10 didn't ask anyone to break out clearing fund
11 from other margin. It just included it
12 within the definition of margin.
13 MR. MAGUIRE: I understand that's your
14 position.
15 WITNESS' ATTORNEY: It is not my
16 position, it is what the 30(b)(6) says.
17 It's what your partner just said it says.
18 MR. MAGUIRE: You don't need to recite
19 what the document says. Let me strike that.
20 Let's focus on this.
21 Q. With respect to the -- what do you
22 mean in your notes by the "open trade value"?
23 A. So the mark to market of unsettled
24 derivatives as of the acquisition date.
25 Q. And the open trade value with respect

Page 128

1 ROMAIN
2 to options, that's the 1.1 billion number that
3 you have told us about?
4 A. 1.03. Yeah.
5 Q. 1.03, I am sorry.
6 Do you know how much of that is at the
7 OCC versus foreign exchanges?
8 A. That's all at the OCC.
9 Q. All at the OCC. So there is no --
10 nothing reflected on the acquisition balance
11 sheet in respect of any open trade value at any
12 foreign options exchanges that you are aware of?
13 A. I'm not aware of anything.
14 Q. A little further up at the beginning
15 of your notes on G, you say, "The margin and
16 collateral held at foreign exchanges, brokers
17 and clearing houses, excluding collateral held
18 at domestic exchanges, brokers, clearing houses,
19 was valued as of the closing at approximately
20 1.2 billion dollars."
21 A. Yeah.
22 Q. And can you tell me that 1.2 billion
23 dollars, where any of that is reflected on the
24 overall futures balance sheet, 546A?
25 A. So it is included in a number of

Page 129

1 ROMAIN
2 places. So within 154 in T Bills, within the
3 foreign brokers number, a bit further down 261,
4 Lehman affiliates receivables. That's the main
5 place. Where else -- and then there is also an
6 element of that wasn't recognized on the balance
7 sheet as we talked before. So the 470 doesn't
8 feed into the overall asset number.
9 Q. And that's the 470 million dollar
10 number that you spoke about and which is was 460
11 million in your handwritten notes?
12 A. That's correct.
13 Q. Is there a breakdown schedule that you
14 have seen that shows that 1.2 billion dollars
15 broken out by exchange?
16 A. Yes. It is included in the exhibits
17 to Liz James' declaration. It is -- those are
18 the individual items. To get to 1.2, you have
19 to add up a few of them. But however that's --
20 that's the source or that is an item-by-item
21 representation of the various exchanges
22 involved.
23 Q. You mentioned with respect to the
24 overall options acquisition, there was an, in
25 addition to the margin, a valuation of the

Page 130

1 ROMAIN
2 derivative positions and there was a large
3 spreadsheet that went CUSIP by CUSIP?
4 A. Yes.
5 Q. Who was involved in that process of
6 going through that CUSIP by CUSIP?
7 A. That was part of the overall valuation
8 exercise which was occurring through the
9 periods, through the period from sort of
10 acquisition through -- or shortly after
11 acquisition date through to finalizing the
12 acquisition accounting in January, February from
13 a finance perspective. The main person that was
14 involved in that was Jerry Shi, S-H-I, and also
15 a number of people in the business would have
16 been -- who were looking after those option
17 positions were involved.
18 Q. Was Ms. James involved in that
19 process?
20 A. Liz James works in the futures area,
21 whereas the spreadsheet we are talking about was
22 the one which underlies the 1.03 which is
23 options. So she wouldn't have been involved in
24 that.
25 Q. She is not involved. OK, who on the

Page 131

1 ROMAIN
2 business side was involved?
3 A. My main contact was Sean McKenna. I'm
4 not sure who else was involved in it.
5 Q. If you have 546A in front of you,
6 there are a couple of items at the end. One is
7 WAMCO. Can you tell me what that relates to?
8 A. I don't know. It is a small amount,
9 wasn't an amount which I focused on myself.
10 Q. Sure. If you turn to your typewritten
11 notes, Exhibit 534A, at the bottom of the first
12 page you have a section on OCC options?
13 WITNESS' ATTORNEY: Which page?
14 MR. MAGUIRE: The first page?
15 A. Yes.
16 Q. And your first sentence concerns this
17 number, 1.027 billion. Is that the 1.03 billion
18 we have been discussing?
19 A. It is, yes.
20 Q. And you say of this, 800 million
21 represented the loss as of acquisition on the
22 LBSF options?
23 A. Yeah.
24 Q. So all of that was recognized as a
25 liability on the balance sheet?

Page 132

1 ROMAIN
2 A. That's correct.
3 Q. You say this represented the loss as
4 of acquisition. Do you know whether that was as
5 of the acquisition date, September 22, or a
6 later date?
7 A. It was -- it was the 22nd, yes.
8 Q. And these are LBSF options? That's a
9 Lehman affiliate?
10 A. That's correct, yeah.
11 Q. Do you know whether that Lehman
12 affiliate had posted any margin in respect of
13 those positions?
14 WITNESS' ATTORNEY: Objection, lacks
15 foundation. He is not a 30(b)(6) witness on
16 that question.
17 Q. Do you know, sir?
18 A. The margin that was posted in those
19 accounts covered by the LBI and LBS positions.
20 Q. My question is whether LBSF itself
21 posted --
22 A. I don't know. I don't know whether it
23 would have. I'm not sure of all that.
24 Q. Who would know that?
25 A. I'm not sure.

Page 133

1 ROMAIN
2 Q. If you turn to the top of the next
3 page; first full paragraph describes a loss of
4 730 million that was experienced in late
5 September and early October. Do you see that?
6 A. Yeah.
7 Q. How was that 730 million dollar also
8 accounted for?
9 A. That's post-acquisition P&L.
10 Q. So that loss did not affect the
11 opening balance sheet?
12 A. That's correct.
13 Q. Do you know whether Barclays engaged
14 in any hedging transactions with respect to any
15 of the positions that generated this loss?
16 A. On where there were some hedging
17 transactions, I don't -- I don't have detail,
18 you know, detailed knowledge of precisely what
19 they were, but there were some hedging
20 transactions.
21 Q. Do you know whether the accounting
22 that's reflected here, 730 -- that 730 million
23 dollar loss, do you know whether that's net of
24 the results of any hedging transactions?
25 WITNESS' ATTORNEY: Objection, lacks

Page 134

1 ROMAIN
2 foundation. Again, beyond the 30(b)(6). I
3 am letting it go because we are trying to be
4 open and cooperative, but you have not
5 established that he knows any details about
6 when the hedging was, nor is it a 30(b)(6)
7 topic.
8 MR. MAGUIRE: This witness is here in
9 his individual capacity and I very much do
10 not want to bring him back either in his
11 individual capacity nor as --
12 WITNESS' ATTORNEY: He is not --
13 MR. MAGUIRE: I am trying to give you
14 an assurance I'm not bringing him back in
15 his individual capacity or as a 30(b)(6).
16 WITNESS' ATTORNEY: You did not notice
17 his deposition in an individual capacity.
18 MR. MAGUIRE: That's right, but you
19 have asked for an assurance. So I can't
20 give you that assurance if you are telling
21 me I can't ask any questions about his
22 knowledge.
23 WITNESS' ATTORNEY: You can ask if you
24 lay a foundation for them, or else I will
25 object. It is not clear when the hedging

Page 135

1 ROMAIN
2 was that you are asking him about.
3 Q. Sir, do you know whether the 730
4 million dollar loss that's expressed here takes
5 into account any offsetting hedging
6 transactions?
7 A. In terms of context, I don't know too
8 much about the hedging transactions. I do know
9 that number is gross. It doesn't include the
10 impact of hedges.
11 Q. When Barclays experiences a loss on --
12 in the course of trading and the loss is
13 incurred in connection with trading that was the
14 subject of a hedge, can you tell me how that is
15 generally accounted for, whether the loss is
16 recorded in a gross basis or whether the loss is
17 recorded net of any offsetting or hedging
18 activity?
19 WITNESS' ATTORNEY: Objection, vague
20 and ambiguous.
21 A. It is somewhat of a moot point for
22 financial reporting purposes because the results
23 of both the transactions and hedges are included
24 within trading profit and loss in the P&L as it
25 is presented. They will be recorded gross.

Page 136

1 ROMAIN
2 Absolutely. So, yes, they are recognized gross.
3 They will both be presented within the overall
4 trading results of Barclays, but they are
5 recorded gross.
6 Q. If we wanted to find out about any
7 hedging transactions that Barclays entered into
8 with respect to any positions that Lehman had,
9 who would be able to tell us that if you know?
10 A. I'm not sure.
11 Q. The next section -- I'm sorry just
12 before the end of that section, you talk about
13 certain interviews with Clark, Briana and
14 McInerny. Tell me what interviews you are
15 referring to there.
16 A. I had a conversation with those three
17 individuals yesterday, and I had had a
18 conversation with just Eric a few days before.
19 Q. And I am sorry, Eric is --
20 A. Clark, sorry.
21 Q. Tell us first about your conversation
22 a few days ago with Eric?
23 A. I'm trying to think. It was very
24 brief. The only substantial point I can recall
25 is he mentions the 730 million dollar number and

Page 137

1 ROMAIN
2 its basis and I asked him a couple of questions
3 to make sure I understood what it was and that's
4 it really.
5 Q. With respect to the conversation that
6 you had with these people yesterday, can you
7 tell us what happened there?
8 A. It covered the same thing. I am
9 thinking I just went through really the time
10 line of sort of what happened between the
11 acquisition date and December and October. So I
12 was just understanding the significance of the
13 dates and reaffirming the meaning of the 730
14 million dollar amount.
15 Q. And then it is your understanding that
16 from the 7th of October, the assets, the
17 proprietary options positions basically being
18 mixed in with the legacy, I'll call them,
19 positions in Barclays' inventory?
20 A. Yeah, they were transferred into
21 existing trading books, yes.
22 Q. When they were transferred over, they
23 were transferred over based on the valuations
24 that people had -- that your pricing people had
25 put on those proprietary options positions, is

Page 138

1 ROMAIN
2 that correct?
3 A. I don't know. Because none of that
4 would have any consequence for external
5 accounting. I didn't look into at what price,
6 you know, two areas of Barclays might have
7 transferred the positions.
8 Q. The proprietary options positions, as
9 of the closing date are reflected on the balance
10 sheet, right?
11 A. Yup.
12 Q. Do you know whether the transfer of
13 those positions to -- at Barclays systems was
14 done at the same price that was used for those
15 positions on the acquisition balance sheet or a
16 different price?
17 WITNESS' ATTORNEY: Objection, vague.
18 A. I don't know.
19 Q. The next section talks about
20 nonaffiliate customer options and you note in
21 the second paragraph that Barclays did not book
22 any gains or losses on nonaffiliate customer
23 options. Do you see that, sir?
24 A. Um-hm.
25 Q. Why is that?

Page 139

1 ROMAIN
2 A. They were customer -- they were
3 customer options and for the options, Barclays
4 didn't take on the OCC customers as customers
5 and did not close out the positions as we did
6 with affiliate balances. So the customer
7 positions remained -- remained customer
8 positions. So they continued to experience
9 gains and losses on those positions as they
10 would have been doing.
11 Q. The next section is 074C, affiliate
12 options.
13 A. Yeah.
14 Q. In the second paragraph, you talk
15 about the close-out of these options. All these
16 options were closed out?
17 A. Yeah.
18 Q. And you note a net receivable from LBI
19 based on the LBI Europe options?
20 A. Yes.
21 Q. Why is that a receivable from LBI?
22 A. In terms of the -- in terms of the
23 legal basis, I'm not sure. In terms of the
24 accounting treatment, we do not show any
25 receivable. We have written off 75 percent of

Page 140

1 ROMAIN
2 it as a cost in the acquisition balance sheet
3 and we wrote off the remaining 25 percent in
4 2009 P&L. So there is no receivable showing.
5 Q. Is the same true for the next item
6 based on the LBF options?
7 A. That is for the -- that comment is
8 really for the net receivable of the -- of those
9 four items plus the one in the -- so paragraph
10 24, million items. So if you look at the
11 payments made to close out positions and for
12 some OCC-related costs, the total payment made
13 by Barclays was 104 million dollars and the
14 receivable, which might otherwise have been
15 recognized, has been written off.
16 Q. Next page, you have a section on OCC
17 futures and you discuss that in terms of both
18 LBI affiliates and the nonaffiliated customers,
19 right?
20 A. Yes.
21 Q. And with the affiliates, there was a
22 36 million dollar loss in closing everything
23 out?
24 A. That's correct, yes.
25

Page 141

1 ROMAIN
2 Q. Was that accounted for -- how was that
3 accounted for?
4 A. It was accounted for in the same way.
5 The timing was slightly different in that we had
6 written off 100 percent of it and in the
7 acquisition accounting, but it's been recorded
8 as an expense, an expense being a deduction from
9 the negative good will on the acquisition.
10 Q. You say Barclays did not book any
11 gains or losses upon close-out of any
12 nonaffiliated customer options, and again, why
13 is that?
14 A. Again, for the same reason, the
15 positions were positions of customers, so they
16 would experience gains and losses on their open
17 positions as -- that's what I expect.
18 Q. Were the customers' positions closed
19 out? Are --
20 A. By close out --
21 Q. By close-out, do you mean liquidation
22 or transfer of the account from Lehman to
23 Barclays?
24 A. It is upon transfer and any close outs
25 which may have occurred around the time. I'm

Page 142

1 ROMAIN
2 not sure of the extent to which there were --
3 I'm not sure of the extent to which positions
4 were closed out for nonaffiliates, for
5 nonaffiliate customers because it didn't feed
6 into the accounting, the acquisition in any
7 case, so it wasn't directly pertinent to that
8 accounting.
9 Q. The next section is drawing on margin.
10 When closing out positions at the OCC, do you
11 see that?
12 A. Yeah.
13 Q. And I gather from what follows, that
14 that's done through Barclays' DTC accounts?
15 A. That's correct. That's the way that
16 exchange processes those cash movements.
17 Q. Was there any drawing on any Barclays
18 DTC accounts?
19 A. Was there any drawing on -- well,
20 there were -- in terms of the close-out of
21 affiliates, in terms of the close-out of
22 affiliate balances, I'm not 100 percent sure
23 that it was effected via the OTC account. I
24 would assume it was because that is the
25 settlement mechanism for close-out payments for

Page 143

1 ROMAIN
2 that exchange. I can't be 100 percent
3 definitive.
4 And there would have been drawings on
5 OTC accounts for any normal sort of close-outs
6 of positions that might have been directed by
7 customers who wished to close out their
8 positions. I'm not sure of the extent to which
9 that has occurred and if so, when, again. That
10 was more a mechanic for cash movements rather
11 than anything that would feed into the
12 accounting.
13 Q. So do you know one way or the other
14 whether the OCC drew on any margin in closing
15 out any positions that it --
16 A. On margin?
17 Q. Yeah.
18 WITNESS' ATTORNEY: Objection, asked
19 and answered.
20 A. That exchange does not -- that's not
21 the way they process those cash payments. They
22 will draw on DTC account, on DTC settlement
23 accounts, and then the margin requirements will
24 probably change by an amount. So instead of
25 taking cash from one pot, they take it from

Page 144

1 ROMAIN
2 another pot, but it is -- that's just cash
3 plumbing, how cash moves.
4 Q. I wasn't really asking about the
5 plumbing, that's fine. Do you know whether the
6 OCC drew on assets in the DTC account with
7 respect to --
8 A. I am sorry, previously you talked
9 about margin. So it is a question around
10 whether a cash movements on the -- in the DTC
11 settlement accounts or against margin.
12 Q. Well, let me ask you either. Is there
13 any drawing by the OCC either on margin or DTC
14 accounts?
15 A. Any cash movements for close-outs of
16 positions would have occurred through the DTC
17 settlement accounts. I'm not sure the extent to
18 which they happened and if so when. There would
19 not have been any drawings to the best of my
20 knowledge or Barclays' knowledge on margin
21 accounts because that's not how that exchange
22 works.
23 (Exhibit 547A, letter dated
24 January 12, 2010 from Christopher M. Green
25 with attachment marked for identification,

Page 145

1 ROMAIN
2 as of this date.)
3 Q. We have marked as Exhibit 547A a
4 letter dated January 12, 2010 to Robert G.
5 Gaffey from Christopher M. Green with at least a
6 summary page of attachment and maybe summary
7 pages from each of the attachments. By no means
8 the entire spreadsheets.
9 I just want you to have that there for
10 reference, sir, in case it is of assistance as
11 we deal with the next topic on your notes which
12 is topic 27, DTCC clearance box assets?
13 A. OK.
14 Q. With respect to A, you refer to a
15 table.
16 A. Yes.
17 Q. I guess table discusses -- do you want
18 to maybe explain the table for us?
19 A. Sure. So each row is an item in the
20 acquisition balance sheet. So in Exhibit
21 377A -- and I'm splitting those items between
22 four columns and the four columns -- well, the
23 first column represents schedule A assets which
24 were delivered in September. The second column
25 represents assets which were delivered as part

Page 146

1 ROMAIN
2 of the JPM settlement as regards schedule A
3 assets. The third column represents the
4 schedule B assets which were received in late
5 September and the fourth column represents
6 schedule B assets that are not received and that
7 were included in the acquisition balance sheet.
8 Q. And if we take the first -- the bottom
9 of the left-hand side, you have a valuation
10 adjustment at the bottom and that totals 2.087
11 and that's -- ties to the 2.09 number in the
12 acquisition balance sheet?
13 A. That's correct.
14 Q. Now, what do you understand that
15 valuation adjustment to represent?
16 A. That's the bid/offer adjustment which
17 is required to appropriately state assets at
18 their bid prices as required by accounting
19 standards.
20 Q. Does Barclays maintain all of the
21 securities that it carries at fair value
22 according to that same principle?
23 A. Yes, they are all shown at bid prices
24 except where there are some -- except where
25 there are a specific guidance to do otherwise

Page 147

1 ROMAIN
2 which are very limited circumstances. So --
3 well, the main one is if you have got offsetting
4 risk positions, so you have got long and short
5 positions, then you will typically show both the
6 long and short positions at their mid prices
7 because the bid offer adjustments would offset
8 anyway and you will only apply a bid over
9 reserve to the net long position.
10 Obviously, here, these are just long
11 positions, these are just assets, so we would
12 show them at bid prices because that's what's
13 required.
14 Q. Then you have 784 million dollar
15 schedule B amount which is split up by the
16 different days in which the assets were
17 received?
18 A. Uh-huh, yup.
19 Q. 19th of September, that's a reference
20 to the 074 box at DTC, is that right?
21 A. Yeah.
22 Q. And 29th of September, that's a
23 reference to 636, that's the account, is that
24 correct?
25 A. Yes, 636 box, yeah.

Page 148

1 ROMAIN
2 Q. And 30th of September, you have
3 parenthetical 7256. What does that represent?
4 A. I'm not familiar -- it is a small
5 number. I'm not familiar with that account, but
6 it is -- it's a delivery from another box. I
7 have not personally looked into precisely what
8 box that is.
9 Q. Do you know whether that box was at
10 the Depository Trust Corporation?
11 A. I don't know where it was.
12 Q. Now, if we look at the January 12
13 letter and its attachments.
14 A. Yup.
15 Q. This relates to a number of
16 spreadsheets. Are you familiar with any of
17 these spreadsheets?
18 A. I am.
19 Q. With all of them?
20 A. The first one I'm familiar with in
21 that it was via the workings behind -- let me
22 just check. I just need to check something.
23 So this was a calculation of the total
24 fair value of assets recognized on the
25 acquisition balance sheet which relate to

Page 149

1 ROMAIN
2 schedule A deliveries, both September and
3 December. So it is the total fair value of both
4 of those.
5 Q. The first page has repo collateral
6 valuation summary, do you see that?
7 A. Yes, that's the page I was talking
8 about. That's the calculation to give us the
9 total fair value what we received on the
10 schedule A deliveries.
11 Q. If we look at the top 45.788. If I
12 remember value of financial inventory received
13 and that's what is reflected on the acquisition
14 balance sheet.
15 A. Yup.
16 Q. And then I guess in this box, there is
17 two nonrepo items that are taken out?
18 A. That's correct, yes.
19 Q. And then cash is added in?
20 A. Yes.
21 Q. And that gives a total of 45.55
22 billion?
23 A. That's correct.
24 Q. If we turn to the next spreadsheet,
25 it's called schedule B, is that right, 22

Page 150

1 ROMAIN
2 September?
3 A. Yeah.
4 Q. The first column is notional. What
5 is -- I shouldn't say first column. I guess
6 first column after the description of the
7 securities is notional. What do you mean by
8 notional?
9 A. That's the par value or face value of
10 the securities.
11 Q. And then BoNY value is a value
12 attributed to those securities by BoNY, is that
13 correct?
14 A. Yes, that's my understanding, yeah.
15 Q. And PCG value is Barclays desk's?
16 A. That's the mid price value that was
17 included in our acquisition accounting.
18 Q. That's the Product Control Group, is
19 that right?
20 A. It's determined by -- under Barclays'
21 price testing and valuation policies which
22 require final verification by the Product
23 Control Group.
24 Q. And then what's the -- what's the next
25 column, MV 922 with bid/offer?

Page 151

1 ROMAIN
2 A. That is the bid/offer adjustment
3 against those mid values that is required to
4 adjust them to bid prices.
5 Q. And the amount of that adjustment is
6 under -- the amount of that adjustment is 19
7 million, point 6?
8 A. That's right, yeah.
9 Q. And that -- that adjustment is called
10 a -- is that -- I guess after that adjustment
11 has been made, there is a value called PCG
12 liquidity value? --
13 A. Yeah, that's the bid price.
14 Q. So all of the securities that are the
15 subject of this spreadsheet are carried on
16 Barclays' books at the PCG liquidity value.
17 A. Plus accrued interest which is the
18 final column.
19 Q. Right. And the liquidity value you
20 understand to be the bid price?
21 A. Yes, that's right.
22 Q. And all securities that Barclays
23 buys -- except for the very limited exceptions,
24 are carried on Barclays' books at the bid price?
25 A. That's correct. Well, all assets

Page 152

1 ROMAIN
2 which are fair-valued not accrual-accounted
3 loans.
4 Q. The next spreadsheet, can you tell me
5 what this is?
6 A. Right here, of course, yeah. This is
7 the split of that item between the different
8 deliveries. So this is the work-in which gives
9 us the 19th, 29th and 30th items that are
10 included in my printed notes.
11 Q. Can you show us at the left-hand side
12 the 9/30, September 30 and 9/19, September 19
13 and so on?
14 A. Can you repeat that question, sorry.
15 Q. You are saying this gives us the
16 breakout, I am trying to see where it says --
17 A. Sorry. So, each row is a different
18 delivery. The columns are the same, the same
19 columns as on the preceding sheet. So it is
20 breaking out the BoNY price, the Barclays mid
21 price, the bid/offer and then the bid price.
22 And then also the -- and then the principal and
23 interest which gives us the 26, the 589 and the
24 174, which are the numbers that you see in the
25 fourth column of numbers when you add to the

Page 153

1 ROMAIN
2 final column, the 7.
3 Q. And then the next spreadsheet, is that
4 just the underlying detail for this?
5 A. It is certainly a part of that. I
6 can't quite work out from the way it's printed,
7 but it's part of the underlying detail, yes.
8 That's the same for the rest. That's the same
9 for the rest of these spreadsheets. They feed
10 up into those top summary sheets.
11 Q. Now, by the way, how is interest
12 computed where we see --
13 A. It was a -- it was a rough calculation
14 because it's, you know, it is an adjustment you
15 need to make to fair value. If a security is
16 halfway between two coupon payment dates, then
17 its fair value will be different than if it is
18 the day before a coupon payment date. It is the
19 accrual of interest over time.
20 So there was a calculation made to
21 estimate the appropriate adjustments to make
22 sure that we were showing the appropriate bid
23 price which reflected accrued interest.
24 Q. If we take topic 39 on your
25 typewritten notes.

Page 154

1 ROMAIN
2 A. Yeah.
3 Q. You refer to your attached memo?
4 A. Yeah.
5 Q. Is that -- or your produced memo,
6 that's Exhibit 533A.
7 A. That's correct.
8 Q. You go on then on the next page under
9 topic 40, you talk about Exhibit 86B, and you
10 say these are clean prices. Can you tell me
11 what you mean by that?
12 A. That's -- when you value a security at
13 a clean price means when you don't include
14 accrued interest. Or actually to get the credit
15 fair value, you need to include accrued
16 interest.
17 Q. And you say there is an additional 345
18 million included in the acquisition balance
19 sheet in respect of the accrued interest?
20 A. Yes.
21 Q. How is that computed?
22 A. That's the calculation I was just
23 talking about. You try to assess -- it would be
24 based on the frequency of coupon payment dates
25 for the securities which were acquired, the rate

Page 155

1 ROMAIN
2 of interest accruing through that period, to
3 make an appropriate fair value adjustment. I
4 didn't do the calculation myself, but it was
5 performed by finance and verified, included as
6 the addition.
7 Q. Is the accrued interest based on the
8 actual coupon rate of each individual security?
9 A. I'm not sure whether it was done at a
10 CUSIP-by-CUSIP level. I'm not sure if there was
11 some approximation, but certainly any level of
12 approximation that was included, it would have
13 been appropriate within materiality bounds.
14 MR. MAGUIRE: This is probably a
15 pretty good time for a break. Thank you.
16 (Recess)
17 MR. MAGUIRE: We will mark as Exhibit
18 548A an e-mail from Robert MacGoey to Mark
19 Morton dated February 1, 2005.
20 (Exhibit 548A, document Bates stamped
21 BCI-EX-(S) 00110233 through 236 marked for
22 identification, as of this date.)
23 Q. Before we turn too this exhibit, sir,
24 we had discussed a little earlier Barclays'
25 policy for recording the fair value of

Page 156

1 ROMAIN
2 securities. Do you understand that to be a
3 written policy that's available for the product
4 control group and other professionals at
5 Barclays in market securities?
6 A. There are -- yeah, there are written
7 valuation policies. I don't use them day-to-day
8 because I'm not in that department, but there
9 are written valuation guidelines.
10 Q. You have access to them, just don't
11 use them on an daily basis?
12 A. I would have to ask somebody for them.
13 I don't have them in my office or anything, but
14 I could get them if I wanted to.
15 MR. MAGUIRE: Hamish, I believe we
16 have outstanding a request for those
17 policies.
18 WITNESS' ATTORNEY: I think we are
19 producing them, but is the request -- we can
20 discuss it off line.
21 Q. This e-mail I have handed you, I would
22 like you to look at the beginning of the string.
23 It is on the second page of the exhibit.
24 A. OK.
25 Q. The first item that's raised here is

Page 157

1 ROMAIN
2 the bid/offer issue, the desk marks the bid. Do
3 you see that?
4 A. Yeah.
5 Q. And the valuation adjustment is taken
6 on the desk price; therefore, this appears to be
7 double-counting. How is this issue resolved?
8 A. The items which were included in the
9 acquisition balance sheets were definitely bid
10 prices with no double counting. So it would
11 have been resolved in one of two ways. Either
12 Rob MacGoey was mistaken or there was an
13 amendment made. I don't know which of the two,
14 but I do know the outputs. The resolution was
15 that the items which were included in 3778 were
16 appropriately marked at bid prices as at right
17 date.
18 Q. And you will see that he makes a
19 reference here to various dates, December 31,
20 December 22 and notes of prices changed
21 significantly in many cases from the 22nd to the
22 31st. Can you tell me what was the date that
23 Barclays used to value the JP Morgan settlement
24 securities?
25 A. I don't understand the point that Rob

Page 158

1 ROMAIN
2 MacGoey is making here. My understanding is
3 they are marked as of the date they are
4 received. So I think that was 22nd, 23rd of
5 December. So I don't understand that point.
6 I'm not sure what he is -- what he is
7 suggesting.
8 Q. He also has a reference here to,
9 "Consistent with the Lehman portfolio approach."
10 And do you understand that the -- leaving aside
11 the JP Morgan portfolio and focusing on the
12 securities that were, I think, earlier
13 identified as repo securities, do you understand
14 that that portfolio had been valued based on
15 September 22 values or did you understand that
16 some other date was used?
17 A. They were valued based on the 22nd.
18 Q. 22nd of September, 2008?
19 A. That's correct.
20 Q. Did you participate in any discussions
21 with Barclays' auditors concerning any of these
22 points?
23 A. I did participate in discussions as to
24 the appropriate valuation date. As I said some
25 hours earlier, there was some discussion around

Page 159

1 ROMAIN
2 whether or not we should use a later date
3 because it took us some time to take control of
4 the assets and reconcile them, et cetera. It is
5 possible that there are some crossed wires here
6 or it's possible that -- it is possible at this
7 time that discussion had not completed because
8 Rob is suggesting here that there is a -- still
9 an argument which is out there to mark at 30th
10 of September, but that's not what happened.
11 MR. MAGUIRE: We will mark as Exhibit
12 549 a document, an e-mail from Mr. Romain to
13 Michael Guarnuccio dated July 23, 2009.
14 (Exhibit 549A, document Bates stamped
15 BCI-EX-(S) 218489 through with attachment
16 marked for identification, as of this date.)
17 Q. This e-mail attaches a memo that you
18 prepared?
19 A. That's correct, yeah.
20 Q. And what was the purpose of this memo?
21 A. This was both for Barclays' purposes
22 and to provide places for discussion with PWC
23 when considering the acquisition accounting as
24 it was going to be reflected in the interim
25 financial statements as at 30th of June, 2009.

Page 160

1 ROMAIN
2 MR. MAGUIRE: We will mark as Exhibit
3 550A a document Bates stamped BCI-EX-(S)
4 00218460.
5 (Exhibit 550A, document Bates stamped
6 BCI-EX-(S) 218460 marked for identification,
7 as of this date.)
8 Q. Do you recognize this document?
9 A. Yeah.
10 Q. You will see there is a reference to
11 PWC spreadsheet. Do you know if these different
12 references here are to a single spreadsheet or
13 multiple spreadsheets?
14 A. That was a single spreadsheet which
15 was probably all the evidence that was provided
16 to PWC when they were looking at the 2008
17 financial statements.
18 So this memo was to reconcile
19 between the underlying sort of CUSIP-by-CUSIP
20 valuation summaries and what was included in the
21 acquisition balance sheet and the square
22 brackets rule. So just to check that that was
23 also consistent with the spreadsheet that PWC
24 had had.
25 Q. Who prepared the PWC spreadsheet?

Page 161

1 ROMAIN
2 A. It was put together by Sean Teague.
3 MR. MAGUIRE: Hamish, we would request
4 that document, please.
5 WITNESS' ATTORNEY: Sorry, you are
6 asking --
7 MR. MAGUIRE: The PWC spreadsheet.
8 WITNESS' ATTORNEY: That relates to
9 this Exhibit 550A.
10 MR. MAGUIRE: That the witness just
11 referred to reflected on this document.
12 WITNESS' ATTORNEY: We will take it
13 under advisement. We can discuss it off the
14 record.
15 Q. Sir, I am going to show you a document
16 you have seen before, Exhibit 404A, and the
17 reason I am showing it is if you can help me
18 just explain where that fits in with the
19 exhibits to Ms. James' declaration.
20 WITNESS' ATTORNEY: This document
21 doesn't have a Bates number. Does anyone
22 understand why?
23 MR. MAGUIRE: 404A?
24 WITNESS' ATTORNEY: Was it produced by
25 us?

Page 162

1 ROMAIN
2 MR. MAGUIRE: I assume yeah.
3 Q. It has your handwriting on it, sir,
4 right?
5 A. Yeah, it is my handwriting.
6 WITNESS' ATTORNEY: Is there a
7 question?
8 MR. MAGUIRE: Yeah, the question is
9 how 404A relates to the exhibits to
10 Ms. James' declaration.
11 A. So the money markets and the cash
12 elements are the same as Exhibit -- as the first
13 items in Exhibit 2. And also, actually, the
14 notes on this -- well, Liz James is going to
15 talk to you in more detail in her deposition,
16 but the notes I've made on this have refreshed
17 my memory as to the difference between these
18 items and the ones we talked about on the
19 futures balance sheet and it was that they were
20 a different date.
21 As you can see from the handwriting,
22 that Liz James' spreadsheets were based on 6 of
23 October and the trustee physically transfers
24 cash over to us rather than the acquisition
25 date. So as I said, Liz will talk to that

Page 163

1 ROMAIN
2 tomorrow. But as I explained, there was a
3 reason for the difference.
4 The 26 -- yeah, so -- then you have a
5 foreign brokers 265986 which again is the other
6 number on Exhibit 2. And then --
7 Q. Hold on one second so I can catch up
8 to you.
9 A. This spreadsheet is Exhibit 2 and
10 Exhibit 3.
11 Q. I see, OK.
12 And you were saying that the
13 difference, the reconciliation, you believe for
14 the difference between the futures acquisition
15 balance sheet number and the number here is
16 simply one of timing?
17 A. I recall having a conversation with
18 Liz when I was preparing for the first
19 deposition and it was on those lines, but only
20 that that is -- only that that is a contributing
21 factor and we will be able to talk to it more
22 accurately once we have looked into it.
23 Q. This is another spreadsheet, 405A,
24 which I believe you have also seen before and we
25 have -- and it also contains your handwriting,

Page 164

1 ROMAIN
2 sir. Can you tell me where this fits into
3 Ms. James' exhibits?
4 A. It is the same items which were
5 included in Exhibit 1. There is a 25 million
6 difference in the total which I believe is
7 because the Exhibit 405A is as at the 19th of
8 September, whereas Exhibit 1 was based on
9 statements on the date of account close-out,
10 which is a later date. It is the same items,
11 the undelivered proprietary collateral and
12 margin.
13 Q. So 405A, I am sorry, is the one as of
14 September --
15 A. September 19th.
16 Q. September 19. Sir, I will show you a
17 copy of an expert report of Professor Paul
18 Pfeleiderer.
19 MR. MAGUIRE: Hamish, if you have a
20 preference, we will mark it; otherwise, I
21 don't think we need to mark it.
22 WITNESS' ATTORNEY: No, that's fine.
23 I like marking it because it says with the
24 official transcript.
25 MR. MAGUIRE: That's fine. Done.

Page 165

1 ROMAIN
2 Exhibit 551.
3 (Exhibit 551A, Expert Report of
4 Professor Paul Pfeleiderer marked for
5 identification, as of this date.)
6 Q. Sir, have you seen this exhibit
7 before?
8 A. Yes, I have.
9 Q. And when did you see it?
10 A. I saw it on Sunday. I saw it on
11 Sunday.
12 Q. When did you first meet
13 Mr. Pfeleiderer?
14 WITNESS' ATTORNEY: Objection, lacks
15 foundation.
16 Q. Professor Pfeleiderer?
17 A. I don't know actually. I, I was on a
18 call with a number of people which I think
19 included Paul Pfeleiderer, but I'm not 100
20 percent certain. I think he was on the call.
21 Q. Who all was on the call as best you
22 can --
23 A. Sorry?
24 Q. Who do you remember being on that
25 call?

Page 166

1 ROMAIN
2 A. I remember there being expert
3 witnesses on the call, but I do not recall a
4 name. I didn't note it down at the time, the
5 names. But I knew that the expert witnesses in
6 the case were on the call.
7 Q. When was the call?
8 A. I can't remember. It was a -- I think
9 it was just before Christmas, not just after.
10 Yeah.
11 Q. Where were you at the time?
12 A. I was in London.
13 Q. How did the call get set up?
14 A. Mechanically, I'm not sure who set it
15 up. It is placed with counsel.
16 Q. Did you understand the purpose of the
17 call was to enable experts to interview you to
18 get a better understanding of the accounting for
19 the acquisition?
20 A. Yeah, that's right.
21 Q. Were there any documents that were
22 referred to in the course of the call?
23 A. There were a number of documents which
24 would -- I wouldn't be able to pick out any
25 particular -- the sort of documents which have

Page 167

1 ROMAIN
2 been produced here. In terms of was there any
3 specific document that I can recall right now
4 that was talked about, I can't.
5 Q. Was there a list of documents that was
6 the subject of the call?
7 A. No, there was no specified list.
8 Q. Did you have anything in front of you
9 during the call?
10 A. I was sitting at my terminal. So
11 I'm -- I may have referred to things as I was
12 talking, but I can't recall.
13 Q. Sir, if you turn to page 63 of the
14 report, you will see a section that begins
15 Barclays' accounting gain on the acquisition.
16 Are you with me?
17 A. Yeah, yeah.
18 Q. Have you read -- that goes by the
19 way -- that starts at paragraph 109 and taking
20 that section all the way through to page 71,
21 paragraph 121, have you read that section of
22 this report?
23 A. I read the report. I didn't study it
24 at great length, but I read it through.
25 Q. And did you pay particular attention

Page 168

1 ROMAIN
2 to the accounting part of the report?
3 A. I remember reading this. I didn't --
4 of the subjects which would be more relevant to
5 me personally, that would be one because it
6 was -- it is a part that I knew more about.
7 Q. Now, was there anything in the
8 accounting section of the report that you
9 disagreed with?
10 A. I guess once -- in order to be
11 definitive about is there anything in this
12 report I disagree with, I would want to read it --
13 more carefully. I don't recall anything from
14 the quick read which stood out. But I don't
15 think I could be any more definitive than that.
16 Q. There was nothing that you took
17 exception to as you did your quick reading?
18 A. Not to my recollection.
19 Q. You don't remember reading anything
20 and saying that doesn't sound right or that's
21 not right?
22 WITNESS' ATTORNEY: Objection, asked
23 and answered.
24 A. As I said, based on a -- based on a
25 quick read, there was nothing of that nature

Page 169

1 ROMAIN
2 that I recall, and to be more definitive about
3 it, I would want to read it more carefully.
4 Q. You will see in paragraph 110, the
5 professor notes in the second sentence that, "I
6 and staff working at my direction also have
7 interviewed Gary Romain, head of technical
8 accounting at Barclays Capital, to get a better
9 understanding of the methods, procedures, and
10 processes by which Barclays developed its
11 accounting summary of the acquisition."
12 Do you see that?
13 A. Yeah.
14 Q. Do you understand that to be a
15 reference to the phone call you have had with
16 various people whose names you are not able to
17 give me?
18 A. There was -- so I had a call and I
19 also met with, again, some expert witnesses
20 whose names I don't recall. I'm sure I could --
21 I obviously could find them out, which was a
22 couple months earlier when I was in New York. I
23 think that was the first -- I think that was the
24 first weekend in November, 2009.
25 Q. How long did that meeting last?

Page 170

1 ROMAIN
2 A. It was a couple of hours. I'm not
3 sure exactly.
4 Q. And were there any documents that were
5 used at that meeting?
6 A. Yeah, again, there were lots. And all
7 the sort of documents which we are talking about
8 now. I don't have -- I don't have a full
9 listing of every document that we were looking
10 at.
11 Q. Have you turned to page 65 of the
12 report. At the bottom of the page, last
13 sentence, the page reads, "Taken together, the
14 repo collateral, the clearance box assets and
15 15c3 asset add up to a total of approximately
16 47.8 billion dollars."
17 Do you see that, sir?
18 A. I do, yes.
19 Q. Then it goes on to add in the
20 exchange-traded derivatives and associated
21 collateral and that brings the total to 50.2
22 billion dollars. Do you see that?
23 A. I do see that, yes.
24 Q. Is that consistent with your
25 understanding?

Page 171

1 ROMAIN
2 A. I haven't checked the arithmetic. It
3 would be relatively easy to do. The 47.8 is
4 correct. Yeah, both numbers are correct.
5 Q. If you turn, sir, to page 68. You
6 will see the first full sentence -- I'm sorry,
7 second full sentence on the page notes that as
8 it turned out, the exchange-traded derivatives
9 accounts had a net day one value to Barclays of
10 approximately 2.4 billion dollars and it
11 continues. Do you see that sentence?
12 A. I do, yeah.
13 Q. Do you know what is the source for
14 that 2.4 billion dollar number?
15 A. So that's -- that is the total of the
16 net -- that's the total of the -- that's the
17 total of the futures and options assets and
18 liabilities included on the acquisition balance
19 sheet.
20 Q. And the underlying source for that
21 then with respect to the futures are the
22 documents supporting the overall futures balance
23 sheet?
24 A. Yeah.
25 Q. And with respect to options, are the

Page 172

1 ROMAIN
2 pricing data that was, that you have testified
3 about, plus the statements showing the margin?
4 A. That's correct.
5 Q. Now, the pricing information that
6 people performed in terms of the deriving those
7 numbers, were they subject to the same fair
8 value policies that you have referred to
9 earlier?
10 A. Yes.
11 Q. And in terms of -- do you know whether
12 those positions also were supported by account
13 statements at the OCC? In other words, did --
14 are there account statements from the OCC which
15 identify those positions and their value?
16 WITNESS' ATTORNEY: Objection, lacks
17 foundation.
18 A. I don't know what the source for the
19 position-by-position listing was.
20 Q. If you turn to your typewritten notes,
21 Exhibit 534A.
22 A. Yup.
23 Q. For topic 43, I believe it is, 43,
24 43G -- I am sorry, 43H.
25 A. Yup.

Page 173

1 ROMAIN
2 Q. Maybe you could just explain this for
3 me.
4 A. Sure. So in terms of margin
5 collateral derivatives at the OCC, so you have
6 got the options, 074 -- it is also 274, but that
7 was a very small number. So 074 accounts, there
8 was margin placed with the OCC of 2.295 million,
9 included in the balance sheets, which was 1.328
10 million cash, 966 million Treasuries. There was
11 also an amount of 40 million which was in the
12 form of proceeds of letters of credit which is
13 not recognized in the balance sheet.
14 And then futures, so the 084 accounts,
15 there was margin of 87 million dollars which
16 was -- 47 million was recognized on the balance
17 sheet, 40 million was, again, letter of credit,
18 not recognized on the balance sheet, and there
19 were no -- there was no formal market maker
20 positions that Barclays took on. That account
21 only included affiliate positions which Barclays
22 closed out at a cost of 36 million dollars which
23 was included as an expense in the negative good
24 will calculation.
25 Q. In terms of providing an audit trail

Page 174

1 ROMAIN
2 to PricewaterhouseCoopers for the assets in the
3 options -- the options balance sheet or
4 basically the OCC assets, what was the
5 information besides the spreadsheet that was
6 provided to PricewaterhouseCoopers?
7 A. I'm not sure. I don't have a complete
8 inventory of what they asked for and received on
9 that.
10 Q. If you go to the next item clearance
11 box or encumbered assets, (i)?
12 A. Yup.
13 Q. Top of the next page, the second
14 sentence refers to 250, is that million?
15 A. Yes.
16 Q. And what does that refer to?
17 A. 250 million represents two amounts.
18 One amount the list B2 and C securities from
19 schedule B that we hadn't recognized on the
20 balance sheets because we hadn't done sufficient
21 work to identify the relevant securities when we
22 were finalizing our 2008 financial statements.
23 That's -- what's the amount. I think
24 it is around about -- here it is. So 160
25 million dollars approximately and then also

Page 175

1 ROMAIN
2 includes principal and interest which would have
3 been accruing on the 707 million list A and B1
4 assets which we have not yet received and that
5 is -- well, in previous deposition, it was an
6 amount of 63 million dollars approximately.
7 Time has elapsed since then, so I believe it is
8 around 90 million dollars, giving the total of
9 250.
10 Q. If you look at topic 47, reference to
11 the less liquid assets.
12 A. Yeah.
13 Q. Is it true to say that all of the
14 assets that Barclays has acquired are now being
15 valued on the -- everything that's on the
16 acquisition balance sheet has been subjected to
17 a fair value?
18 A. Yes.
19 Q. And with respect to the remaining
20 assets that you described that have not been
21 recorded on the balance sheet, but which
22 Barclays maintains it is entitled to a value as
23 being attributed to those as well?
24 A. Well, no --
25 WITNESS' ATTORNEY: Objection, vague

Page 176

1 ROMAIN
2 and ambiguous.
3 A. Attributed in what way? It is not
4 recognized on the balance sheets anywhere.
5 Q. I'm not asking --
6 A. But we are monitoring, we are
7 monitoring the value. I guess what I want to
8 say is if it came to the time that we were to
9 recognize those assets, then an amount of due
10 diligence and application of policy and all
11 that, et cetera, which has not happened would
12 need to happen.
13 Q. And with respect to your handwritten
14 notes, Exhibit 399A, the assets not received not
15 on the balance sheet, those four items represent
16 everything that you are aware of?
17 A. The items are -- yeah, they are the
18 items I am aware of, that's right.
19 Q. And those amounts there subject to, I
20 guess, the 63 and the inflection of time, you
21 say that's now closer to 90, but the numbers
22 there represent Barclays' best estimate of their
23 values?
24 A. The numbers, the numbers now are
25 similar, but as you say, so the principal and

Page 177

1 ROMAIN
2 interest would have increased. The unencumbered
3 assets would have a different value because they
4 are securities whose market value changes over
5 time. But the amount is not materially
6 different.
7 MR. MAGUIRE: OK. Why don't we take a
8 break and see if we can wrap this up.
9 THE WITNESS: Sure.
10 (Recess)
11 Q. Sir, you referred in your notes that
12 you prepared for this deposition, see produced
13 memo, and that's I believe Exhibit 533A.
14 A. That's correct.
15 Q. This has the post-acquisition gains
16 and losses for Lehman inventory?
17 A. It is the results of an exercise which
18 we performed. To be clear, to try and do this
19 is not easy and it does reflect quite a number
20 of assumptions because all of this inventory was
21 commingled in trading books. So it is -- it was
22 a fair amount of work, but it's after that
23 amount of work, it was best estimates we could
24 come up with.
25 Q. And when you say the assumptions, what

Page 178

1 ROMAIN
2 kinds of assumptions did you need to make?
3 A. I didn't do the detailed work, but
4 there was some assumptions around the, you know,
5 the allocation of hedges, the allocation of
6 total P&L in a book between Lehman acquired and
7 legacy where there are, you know, very similar
8 assets which are in the same book.
9 Then you may have to do some pro rata
10 or arithmetic to come up with a reasonable
11 estimate which would be the case for hedges as
12 well where the hedges are put on as a hedge of
13 the overall book and some of that book was
14 acquired in the same acquisition and some of it
15 was not. So it is those sort of estimates.
16 Q. Where you had the same CUSIP in
17 Barclays' inventory securities with the same
18 CUSIP that were both legacy Barclays inventory
19 and acquired inventory from Lehman, I take it
20 that on any given day, the same pricing would
21 apply to all of those securities with that same
22 CUSIP?
23 A. If you have got something with the
24 same CUSIP which is sitting in a trading book,
25 then the relevant trader and product control

Page 179

1 ROMAIN
2 contact would be valuing it as a single amount.
3 They would have no idea.
4 Obviously, there are some estimates
5 and judgments involved in valuing, so if you had
6 a -- you know, in a -- in theory, if you had
7 similar structured products in completely
8 different books, then would two traders and two
9 product controllers end up with a slightly
10 different number in a range, possibly. But
11 that -- it is quite a far-fetched situation
12 because it is unlikely you would have two
13 structured products which are that similar.
14 So there is some judgment involved,
15 but certainly where you have got the same CUSIP
16 in the same book, then it is valued in the same
17 way.
18 Q. In terms of the -- in the course of
19 this memo here, there is a lot of references to
20 hedging. How did Barclays allocate for the
21 purposes of this memo hedging results to
22 specific types of securities and trading
23 results?
24 A. There were assumptions made, but I
25 wouldn't be in a position to sort of

Page 180

1 ROMAIN
2 characterize the assumptions. I didn't do the
3 detailed work. I asked for the analysis to be
4 performed and was clear about what we were
5 trying to achieve. But didn't do the detailed
6 calculation and interrogation.
7 Q. So if we look, for example, at agency
8 mortgages which were 13 billion, there is 291
9 million dollar total gain on assets and that's
10 where the, those mortgages were sold,
11 transferred, then realizing a gain of 291
12 million, is that correct?
13 A. That's, that's the best estimate of
14 the P&L on the assets and related hedges. I
15 would expect that some of those assets would
16 have been sold and some of them would not have
17 been sold. So if they are mark to market books,
18 so you recognize gains and losses irrespective
19 of whether they are sold.
20 Q. And you understand there is an offset
21 here of 151 million losses on hedges and you're
22 saying some judgment has been applied in terms
23 of allocating a hedge or some amount of a hedge
24 to these specific positions?
25 A. That's correct. In all of these

Page 181

1 ROMAIN
2 items, there was some -- there was some judgment
3 applied in reaching a best estimate.
4 Q. And you're not privy to the specifics
5 of what the hedges were or how specifically they
6 were allocated to one group of securities as
7 opposed to another?
8 WITNESS' ATTORNEY: Object to the
9 form.
10 A. That's correct.
11 Q. Where did you get -- let me ask you
12 first of all, did you prepare this memo?
13 A. No.
14 Q. Who did?
15 A. So this memo is a summary of work
16 which was performed by different product control
17 areas for the different books in terms of
18 pulling it together in and summarizing in a
19 memo. The author was Charles Utley. He did not
20 do -- he didn't do much of the work -- much, if
21 any, of the work. It was more a, my memory is
22 fading me. He pulled other people's work into a
23 single summary memo.
24 Q. So he would have dealt with the people
25 at the product control areas and risk management

Page 182

1 ROMAIN
2 and whoever else and brought in -- and pulled
3 that information together and then he
4 specifically wrote the memo?
5 A. That's correct.
6 Q. With respect to the JPM inventory,
7 this is the inventory that Barclays obtained in
8 December, is that right?
9 A. Yes.
10 Q. Do you know whether there was any
11 hedging on any of that inventory any time prior
12 to its receipt?
13 A. I -- no, I don't know.
14 Q. Who would know that? Do you know?
15 A. If there was any hedging, I guess
16 the -- whoever put on the hedges, because it
17 didn't feed in any way into Barclays'
18 acquisition accounting. It is not something
19 which I would have any knowledge of.
20 Q. And similarly, you don't have any
21 knowledge whether there was any hedging that was
22 done with respect to any of the initial
23 inventory prior to acquisition?
24 A. That's correct, yeah, I don't know.
25 Q. There is a reference here to losses on

Page 183

1 ROMAIN
2 auction. Can you tell me what auction means?
3 A. That's -- so basically, when the
4 inventory was first acquired, it was acquired
5 into a central book if you like and subsequent
6 to that, it was either transferred to trading
7 desks or it was sold externally and the 160
8 million is the net P&L which was recognized in
9 that central book during the period up until
10 those sales and transfers occurred.
11 Q. So all of the inventory goes into, you
12 call it a central book?
13 A. Yeah, so the initial accounting, it
14 was -- a large portfolio of assets was received
15 in largely in one -- in a small number of
16 deliveries over a very short period of time
17 which is unusual and, therefore, it was
18 initially maintained in a central book.
19 But during the period in which it was
20 reconciled, booked, decisions were made in terms
21 of who the appropriate desk was to manage those
22 positions going forward. And once that process
23 was complete, the positions were transferred to
24 the appropriate trading desks that would then
25 manage it as part of their overall existing

Page 184

1 ROMAIN
2 positions or sold in the market.
3 Q. So the date of September 22, I guess,
4 for the initial inventory and December 22 for
5 the JPM inventory, those are the dates when the
6 acquired inventory goes into the central book?
7 A. I'm not sure how it works with the
8 December 22 inventory. But certainly for the
9 September 22, yeah, that was the date when --
10 that was the valuation date that was used for
11 initially recording the inventory.
12 In terms of the actual bookings, there
13 is clearly a fact -- those 22nd of September
14 values and the appropriate bid/offer were not
15 finally determined for some time afterwards. So
16 in terms of how that was managed internally
17 between central book and the trading desks,
18 because that has no impact on Barclays'
19 accounting or internal reporting, it is not
20 something I'm aware of.
21 Q. So all this shows is that a fair value
22 was put on the inventory as of the appropriate
23 valuation date, the acquisition date?
24 A. Yes.
25 Q. And then some time after that, that

Page 185

1 ROMAIN
2 inventory was either sold externally or moved to
3 specific trading desks?
4 A. Yes.
5 Q. And there was a change in value
6 between the initial acquisition accounting and
7 the valuation as of the date of that either
8 external sale or internal transfer?
9 A. That's correct.
10 Q. And the difference in value is 160
11 million dollars?
12 A. Yes.
13 WITNESS' ATTORNEY: Negative.
14 Q. Negative. And that is on not only the
15 external sales, but also on the internal
16 transfers, is that right?
17 A. That's right, yes.
18 Q. Total amount of internal transfers is
19 that 37.2 billion?
20 A. Yeah. Yeah, that's right.
21 Q. So there is only about 7 billion
22 dollars that was sold externally, is that right?
23 A. That was the main difference between
24 37.2 and 44.3. I'm not aware of any other items
25 in that difference, but I guess -- I'm not aware

Page 186	Page 188
<p>1 ROMAIN</p> <p>2 of any other difference.</p> <p>3 Q. Do you have a breakdown of what the</p> <p>4 gain or loss was on the 7 billion dollars that</p> <p>5 was sold externally?</p> <p>6 A. I don't. I don't have a split of the</p> <p>7 160 million between external sales and internal</p> <p>8 transfers.</p> <p>9 Q. When you have an internal transfer, do</p> <p>10 you record that as a profit or loss?</p> <p>11 A. That was no impact on Barclays'</p> <p>12 external reporting and -- no.</p> <p>13 Q. So the 160 million here that would</p> <p>14 have the part of that, that was realized on</p> <p>15 selling 7 billion dollars externally, 7 billion</p> <p>16 dollars worth of securities externally?</p> <p>17 A. No, no. Changes in value during the</p> <p>18 period will impact on our -- what's the best way</p> <p>19 of putting it?</p> <p>20 So the securities would have changed</p> <p>21 in value during the period between initial</p> <p>22 acquisition and then either sale or transfer and</p> <p>23 that's the 160 million. So the sale, the</p> <p>24 transfer itself doesn't trigger any -- doesn't</p> <p>25 trigger any gain or loss, but the positions may</p>	<p>1 ROMAIN</p> <p>2 A. For futures, their main first -- their</p> <p>3 main point of contact within finance -- they</p> <p>4 would have talked to -- they would have talked</p> <p>5 to Lee Howell on the balance sheet and they</p> <p>6 would have talked to various people on the</p> <p>7 product control and valuation. To be honest,</p> <p>8 most of their attention on it would have been on</p> <p>9 the valuation, I would guess. So I'm not sure,</p> <p>10 I'm not sure who that would have been.</p> <p>11 Q. With respect to options, who was the</p> <p>12 principal contact?</p> <p>13 A. Again, for options, if they were</p> <p>14 talking about the link with the acquisition</p> <p>15 balance sheets, so the sort of summary sheets,</p> <p>16 it would have been Iain Cooper. But most of the</p> <p>17 time would have been on the valuation, I would</p> <p>18 expect most of their time to have been on the</p> <p>19 valuation, in which case their main contact</p> <p>20 would on valuation would have been Jerry Shi.</p> <p>21 Q. Who is Jerry Shi?</p> <p>22 A. At the time, Jerry Shi worked in the</p> <p>23 product control valuations group covering</p> <p>24 equities.</p> <p>25 Q. And now?</p>
Page 187	Page 189
<p>1 ROMAIN</p> <p>2 have changed in value during the period.</p> <p>3 Q. Who were the main people at</p> <p>4 PricewaterhouseCoopers with whom you dealt with</p> <p>5 in connection with the accounting, Barclays'</p> <p>6 accounting for the sale, for the acquisition?</p> <p>7 A. The main two people I dealt with were</p> <p>8 Mike Guarnuccio, who is the partner in charge of</p> <p>9 the U.S. audit, and Rob MacGoey who is a, I</p> <p>10 think is a senior manager. He could be a</p> <p>11 director, but works for Mike on the U.S. audit.</p> <p>12 Q. Who on the Barclays' side was the main</p> <p>13 contact for the partner and the manager?</p> <p>14 A. They would have had -- they would have</p> <p>15 had many contacts. If they wanted to understand</p> <p>16 the overall acquisition accounting or any</p> <p>17 accounting policy or technical accounting, some</p> <p>18 overriding issues, then I would have been the</p> <p>19 main contact. If they were auditing any of the</p> <p>20 individual line items in the balance sheets</p> <p>21 which would have been most of their time, then</p> <p>22 they would have spoken to different people</p> <p>23 depending on which item.</p> <p>24 Q. With respect to futures, who would</p> <p>25 have been the contact person?</p>	<p>1 ROMAIN</p> <p>2 A. He has left the firm, so I'm not sure</p> <p>3 who he works for.</p> <p>4 MR. MAGUIRE: Sir, thank you. I have</p> <p>5 no further questions.</p> <p>6 WITNESS' ATTORNEY: Do the lawyers</p> <p>7 representing the debtor or committee have</p> <p>8 any questions?</p> <p>9 MR. TAMBE: We have no questions.</p> <p>10 MR. KAY: No questions.</p> <p>11 MR. TAMBE: Thank you.</p> <p>12 (Time Noted: 5:00 p.m.)</p> <p>13</p> <p>14</p> <p>15 GARY ROMAIN</p> <p>16</p> <p>17 Subscribed and sworn to</p> <p>18 before me this day</p> <p>19 of January, 2010.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 190				Page 192			
1	ROMAIN			1	ROMAIN		
2	INDEX:			2	EXHIBITS		
3	WITNESS	EXAM BY:	PAGE:	3	Exhibit No.	Marked	
4	G. Romain	Mr. Maguire	5	4	Exhibit 548A Document Bates stamped		158
5				5	BCI-EX-(S) 00110233 through		
6	EXHIBITS			6	236		
7	Exhibit No.	Marked		7	Exhibit 549A Document Bates stamped		162
8	Exhibit 533A Document Bates stamped		9	8	BCI-EX-(S) 218489 through with		
9	BCI-EX-295932 through 33			9	attachment		
10	Exhibit 534A Notes entitled "Preparation		9	10	Exhibit 550A Document Bates stamped		163
11	Notes for January 13			11	BCI-EX-(S) 218460		
12	Deposition"			12	Exhibit 551A Expert Report of Professor		168
13	Exhibit 535A Declaration of Elizabeth		15	13	Paul Pfleiderer		
14	James			14			
15	Exhibit 536A Document Bates stamped		47	15			
16	BCI-EX-(S) 52476 through 78			16			
17	with attachment			17			
18	Exhibit 537A Document Bates stamped		59	18			
19	BCI-EX-(S) 78976 with			19			
20	attachment			20			
21	Exhibit 538A Document Bates stamped		66	21			
22	BCI-EX-S109996 through 110002			22			
23	Exhibit 539A Document Bates stamped		76	23			
24	BCI-EX110050			24			
25				25			
Page 191				Page 193			
1	ROMAIN			1	ROMAIN		
2	EXHIBITS			2			
3	Exhibit No.	Marked		3	CERTIFICATE		
4	Exhibit 540A Document Bates stamped		79	4	STATE OF NEW YORK)		
5	BCI-EX-(S)110053 with			5)ss:		
6	attachment			6	COUNTY OF NEW YORK)		
7	Exhibit 541A Document Bates stamped		86	7	I, MARY F. BOWMAN, a Registered		
8	BCI-EX-(S)110070 through 74			8	Professional Reporter, Certified Realtime		
9	Exhibit 542A Document Bates stamped		88	9	Reporter, and Notary Public within and for		
10	BCI-EX-(S)110092 with			10	the State of New York, do hereby certify:		
11	attachment			11	That GARY ROMAIN, the witness whose		
12	Exhibit 543A Document Bates stamped		89	12	deposition is hereinbefore set forth, was		
13	BCI-EX-(S)218500 through 501			13	duly sworn by me and that such deposition is		
14	with attachment			14	a true record of the testimony given by such		
15	Exhibit 544A Document Bates stamped		93	15	witness.		
16	BCI-EX-(S)00110108 through 112			16	I further certify that I am not		
17	Exhibit 545A Document Bates stamped		100	17	related to any of the parties to this action		
18	BCI-EX-(S)110133 through 34			18	by blood or marriage and that I am in no way		
19	Exhibit 546A Document Bates stamped		102	19	interested in the outcome of this matter.		
20	BCI-EX-(S)110162 through 63			20	In witness whereof, I have hereunto		
21	with attachment			21	set my hand this 13th day of January, 2010.		
22	Exhibit 547A Letter dated January 12,		147	22			
23	2010 from Christopher M. Green			23	MARY F. BOWMAN, RPR, CRR		
24	with attachment			24			
25				25			

Page 194

ROMAIN

ERRATA SHEET

NAME OF CASE: In Re: Lehman Brothers

DATE OF DEPOSITION: 1/13/10

NAME OF WITNESS: GARY ROMAIN

Reason codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page ____ Line ____ Reason ____

From ____ to ____

Page ____ Line ____ Reason ____

From ____ to ____

Page ____ Line ____ Reason ____

From ____ to ____

Page ____ Line ____ Reason ____

From ____ to ____

Page ____ Line ____ Reason ____

From ____ to ____

Page ____ Line ____ Reason ____

From ____ to ____

Page ____ Line ____ Reason ____

From ____ to ____

GARY ROMAIN

50 (Page 194)

TSG Reporting 877-702-9580

BCI EXHIBIT

96

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF JAMES SEERY
10 New York, New York
11 Thursday, September 3, 2009
12
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14
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19

20 Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
21 JOB NO. 24296
22
23
24
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Page 2	Page 3
<p>1 2 3 4 5 September 3, 2009 6 8:40 a.m. 7 8 9 HIGHLY CONFIDENTIAL deposition of 10 JAMES P. SEERY, JR., held at the offices 11 of Jones Day, 222 East 41st Street, New 12 York, New York, pursuant to Notice, 13 before Francis X. Frederick, a Certified 14 Shorthand Reporter, Registered Merit 15 Reporter and Notary Public of the States 16 of New York and New Jersey. 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: DAVID L. CARDEN, ESQ. 9 BART GREEN, ESQ. 10 11 BOIES SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays Capital 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JACK G. STERN, ESQ. 16 17 QUINN, EMANUEL, URQUHART, OLIVER & 18 HEDGES, LLP 19 Attorneys for the Creditors Committee 20 865 S. Figueroa Street, 10th Floor 21 Los Angeles, California 90017 22 BY: ERICA P. TAGGART, ESQ. 23 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: (Cont'd.) 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: WILLIAM MAGUIRE, ESQ. 9 FARA TABATABAI, ESQ. 10 11 ALSO PRESENT: 12 RAJESH ANKALKOTI, Alvarez & Marsal 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL 2 JAMES SEERY, called as a witness, 3 having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MS. TAGGART: 8 Q. Good morning, Mr. Seery. 9 A. Good morning. 10 Q. As I just said, my name is Erica 11 Taggart and I represent the Creditors 12 Committee. Are you employed right now? 13 A. I am. 14 Q. By whom? 15 A. Sidley & Austin. 16 Q. And what do you do there? 17 A. I'm a partner. 18 Q. Do you have a specialty? 19 A. They tell me I'm a bankruptcy 20 lawyer. 21 Q. How long have you been practicing 22 as a lawyer? 23 A. Twenty-some -- you know, around 20 24 years. 25 Q. When did you graduate from law</p>

Page 6	Page 7
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 school?</p> <p>3 A. '90.</p> <p>4 Q. Is your license to practice still</p> <p>5 active?</p> <p>6 A. I hope so.</p> <p>7 Q. And where are you licensed to</p> <p>8 practice?</p> <p>9 A. New York State.</p> <p>10 Q. How long have you been working for</p> <p>11 Sidley & Austin?</p> <p>12 A. Since May 4th.</p> <p>13 Q. What did you do before May 4th?</p> <p>14 A. I was at Barclays.</p> <p>15 Q. What was your title at Barclays?</p> <p>16 A. Managing director.</p> <p>17 Q. What did you do as managing</p> <p>18 director?</p> <p>19 A. I was in the -- I guess</p> <p>20 technically in the loan group.</p> <p>21 Q. What do you mean by technically?</p> <p>22 A. The transition of my business -- I</p> <p>23 had completed the transition to my business.</p> <p>24 My role was somewhat undefined so I was</p> <p>25 helping various businesses at Barclays with</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 customer relationships, with deals, with</p> <p>3 restructuring. A number of different</p> <p>4 functions.</p> <p>5 Q. Whom did you report to when you</p> <p>6 were managing director at Barclays?</p> <p>7 A. I don't know.</p> <p>8 Q. Did anyone report to you?</p> <p>9 A. No.</p> <p>10 Q. How long did you work as managing</p> <p>11 director at Barclays?</p> <p>12 A. From the close of the transaction</p> <p>13 to I think May 4th or May 3rd.</p> <p>14 Q. And you're talking about the</p> <p>15 transaction between Barclays and Lehman?</p> <p>16 A. Yes.</p> <p>17 Q. What were your hours,</p> <p>18 approximately, at Barclays when you were</p> <p>19 working there?</p> <p>20 A. I worked for 20 years. I don't</p> <p>21 have hours. Twenty-something years. I work</p> <p>22 all the time.</p> <p>23 Q. Were you busy there?</p> <p>24 A. At Barclays?</p> <p>25 Q. Yes.</p>
Page 8	Page 9
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. What kind of hours did you keep --</p> <p>4 did you stay at the office for set hours?</p> <p>5 A. Not for set hours. I showed up</p> <p>6 before 7 every day and didn't leave before 5</p> <p>7 or 6 every day.</p> <p>8 Q. Were there times that you didn't</p> <p>9 have work to do when you were at Barclays?</p> <p>10 A. I could always find something to</p> <p>11 do.</p> <p>12 Q. Were there times that you weren't</p> <p>13 working while you were there?</p> <p>14 A. No.</p> <p>15 Q. Where did you work before you</p> <p>16 worked at Barclays?</p> <p>17 A. Lehman Brothers.</p> <p>18 Q. Do you know what part of Lehman</p> <p>19 Brothers was employing you?</p> <p>20 A. Yes.</p> <p>21 Q. What was it?</p> <p>22 A. Fixed income.</p> <p>23 Q. What was your title when you were</p> <p>24 working at Lehman Brothers? Let's start with</p> <p>25 the title right before the transaction.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. Global head of fixed income,</p> <p>3 loans.</p> <p>4 Q. What are fixed income loans?</p> <p>5 A. Fixed income is a division. Loans</p> <p>6 was the product.</p> <p>7 Q. How long did you have that role as</p> <p>8 global head of fixed income, loans?</p> <p>9 A. About four years. Four-plus</p> <p>10 years.</p> <p>11 Q. What did you do as global head of</p> <p>12 fixed income, loans?</p> <p>13 A. I was responsible for all of</p> <p>14 Lehman's loans, high-grade, high-yield. The</p> <p>15 fixed income commitment with respect to those</p> <p>16 loans which is underwriting. Trading. Sales.</p> <p>17 Hedging. Portfolio management. Distressed</p> <p>18 finance. I had a significant role in running</p> <p>19 high yield and distressed as well.</p> <p>20 Q. Whom did you report to?</p> <p>21 A. Alex Kirk.</p> <p>22 Q. Do you know what his position was?</p> <p>23 A. At the end he was the head of</p> <p>24 fixed income.</p> <p>25 Q. Whom -- who were your direct</p>

Page 10	Page 11
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 reports?</p> <p>3 A. I had a lot.</p> <p>4 Q. Approximately how many?</p> <p>5 A. Probably had at least -- at least</p> <p>6 seven directs. Maybe more.</p> <p>7 Q. Who are the --</p> <p>8 A. Approximately 40 all-in.</p> <p>9 Q. Who are the direct reports that</p> <p>10 you can recall now?</p> <p>11 A. Well, there was a sales team. And</p> <p>12 while they sometimes filtered through a senior</p> <p>13 sales, head of sales, I had technically direct</p> <p>14 report to them. There was the traders of</p> <p>15 loans. There was the portfolio management</p> <p>16 team. And there was the distressed financing</p> <p>17 and restructuring team which had a split</p> <p>18 report.</p> <p>19 Q. Who was the -- was there a direct</p> <p>20 report associated with the sales team that</p> <p>21 reported to you?</p> <p>22 A. John Kitei.</p> <p>23 Q. What about in the traders of</p> <p>24 loans? Was there a director report to you?</p> <p>25 A. There was -- there was a couple</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 but the chief one would be Alex Stromberg.</p> <p>3 Q. What about in portfolio</p> <p>4 management?</p> <p>5 A. Greg Smith.</p> <p>6 Q. Did you say distressed assets was</p> <p>7 the last?</p> <p>8 A. Distressed finance and</p> <p>9 restructuring. Mark Shapiro.</p> <p>10 Q. When you were global head of fixed</p> <p>11 income, loans, were you acting at all in a</p> <p>12 legal capacity?</p> <p>13 A. No.</p> <p>14 Q. At any time when you were working</p> <p>15 at Lehman Brothers did you work in a legal</p> <p>16 capacity?</p> <p>17 A. No.</p> <p>18 Q. How long were you working with</p> <p>19 Lehman Brothers?</p> <p>20 A. Ten years.</p> <p>21 Q. Can you --</p> <p>22 A. I'm sorry. Not quite ten years.</p> <p>23 A little short of ten years.</p> <p>24 Q. What was your position before you</p> <p>25 were global head of fixed income, loans?</p>
Page 12	Page 13
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. I ran the restructuring and</p> <p>3 portfolio workout businesses.</p> <p>4 Q. About approximately when were you</p> <p>5 dealing with restructuring and portfolio</p> <p>6 workout businesses?</p> <p>7 A. I had restructuring portfolio</p> <p>8 management for workout -- portfolio management</p> <p>9 for just the regular business of our loans</p> <p>10 and distressed positions from '99 when I got</p> <p>11 there till 2005.</p> <p>12 Q. Was there a time when you became</p> <p>13 involved in negotiations relating to any type</p> <p>14 of transaction between Barclays and Lehman?</p> <p>15 A. Yes.</p> <p>16 Q. When was the first time you had</p> <p>17 any involvement in such negotiations?</p> <p>18 A. One of the first days that</p> <p>19 Barclays got involved.</p> <p>20 Q. Do you know about when that was?</p> <p>21 A. September last year.</p> <p>22 Q. I'm going to give you just a</p> <p>23 calendar from that year, from September 2008.</p> <p>24 That might help in identifying dates.</p> <p>25 Looking at this calendar do you</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 know the date that was the first time that you</p> <p>3 became involved in any negotiations between</p> <p>4 Lehman and Barclays?</p> <p>5 A. It was either around the -- I</p> <p>6 think the first day they got involved was the</p> <p>7 10th or the 11th of September of 2008.</p> <p>8 Q. And in what way did you become</p> <p>9 involved?</p> <p>10 A. I was involved in the team to look</p> <p>11 to try to sell Lehman Brothers.</p> <p>12 Q. How did you get involved? Did</p> <p>13 somebody ask you?</p> <p>14 A. Alex Kirk asked me to do it.</p> <p>15 Q. And what in particular did he say</p> <p>16 was the direction for what you would be doing?</p> <p>17 A. Come help us sell Lehman Brothers.</p> <p>18 Q. And what did you do once you got</p> <p>19 that direction?</p> <p>20 A. I went and helped sell Lehman</p> <p>21 Brothers.</p> <p>22 Q. How did you do that?</p> <p>23 A. Described our businesses. Worked</p> <p>24 on providing data to potential purchasers.</p> <p>25 Walking them through the operation of the</p>

Page 14	Page 15
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 business as well as the positions that we</p> <p>3 held.</p> <p>4 Q. During this part -- so before LBHI</p> <p>5 declares bankruptcy, who did you speak to with</p> <p>6 Barclays in relation to negotiations?</p> <p>7 A. There was a team that they had on</p> <p>8 diligence. Mostly reporting to Rick Van Zijl.</p> <p>9 Q. And what type of data were you</p> <p>10 providing?</p> <p>11 A. Positions, marks, personnel,</p> <p>12 structure, commitments.</p> <p>13 Q. What do you mean by providing</p> <p>14 positions?</p> <p>15 A. We provided the potential</p> <p>16 purchasers with a list of the assets that</p> <p>17 Lehman Brothers held as well as the</p> <p>18 liabilities related to those assets.</p> <p>19 Q. Were you providing data on all of</p> <p>20 the assets and liabilities or some subset?</p> <p>21 A. Generally the loan positions.</p> <p>22 Q. Did you provide --</p> <p>23 A. And some of the high-yield</p> <p>24 positions.</p> <p>25 Q. Did you provide documents related</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 to these?</p> <p>3 A. Yes.</p> <p>4 Q. And did the documents list</p> <p>5 specific assets or categories of assets?</p> <p>6 A. Specific and categories.</p> <p>7 Q. And did they also include the --</p> <p>8 was a value attributed to those assets?</p> <p>9 A. Yes. They had marks.</p> <p>10 Q. What are marks?</p> <p>11 A. Mark is the position value that we</p> <p>12 ascribe to a particular position each day</p> <p>13 based upon either the current market or a</p> <p>14 reasonable good faith estimate of where the</p> <p>15 asset would trade in a reasonable period of</p> <p>16 time.</p> <p>17 Q. How often was Lehman marking its</p> <p>18 books?</p> <p>19 A. Daily.</p> <p>20 Q. Did it do that for all of its</p> <p>21 assets?</p> <p>22 A. All of the assets I was</p> <p>23 responsible for. I don't know -- I don't know</p> <p>24 what other people did with their marks on a</p> <p>25 daily basis.</p>
Page 16	Page 17
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did Lehman mark its -- all the</p> <p>3 loan positions on a daily basis?</p> <p>4 A. Yes.</p> <p>5 Q. Who did that?</p> <p>6 A. Various people reporting to me.</p> <p>7 Or through others to me.</p> <p>8 Q. Did they put that information in a</p> <p>9 computerized system?</p> <p>10 A. Yes.</p> <p>11 Q. Did the computerized system have a</p> <p>12 name?</p> <p>13 A. There were many systems in loans.</p> <p>14 Q. So people put in marks to various</p> <p>15 systems in loans?</p> <p>16 A. Yes.</p> <p>17 Q. How would you find out what the --</p> <p>18 well, how did you find out what the marks were</p> <p>19 for the assets that you were providing</p> <p>20 information to Barclays for?</p> <p>21 A. Can you restate the question?</p> <p>22 Q. Yeah. Well, how did you get the</p> <p>23 information to find out the positions and the</p> <p>24 marks for the assets that you were providing</p> <p>25 information about when you were in</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 negotiations with Barclays?</p> <p>3 A. We printed out ledgers.</p> <p>4 Q. Where did you get them?</p> <p>5 A. From a computer.</p> <p>6 Q. And what about information about</p> <p>7 liabilities; where was that kept?</p> <p>8 A. Same place.</p> <p>9 Q. How did you decide which positions</p> <p>10 were going to be valued based on the current</p> <p>11 market versus a good faith estimate about</p> <p>12 where the asset would trade in a reasonable</p> <p>13 period of time?</p> <p>14 A. I don't quite understand your</p> <p>15 question.</p> <p>16 Q. You mentioned that there were two</p> <p>17 ways that Lehman might value assets. I think</p> <p>18 based on the current market or a good faith</p> <p>19 estimate where the asset would trade at a</p> <p>20 reasonable period of time. Which assets were</p> <p>21 valued one way versus another?</p> <p>22 A. Those that had a current market</p> <p>23 were marked to the market. Those that did not</p> <p>24 were marked to a model.</p> <p>25 Q. And when you say an estimate about</p>

Page 18

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **where the asset would trade in a reasonable**
3 **period of time, could you tell me the**
4 **reasonable period of time that you would**
5 **have --**
6 A. It would depend on the asset and
7 the size of the position.
8 Q. What was the range?
9 A. Of what?
10 Q. Of the amount of time that you
11 would consider reasonable.
12 A. Zero to 30 days. It could go
13 long. It can't be shorter than zero but it
14 could go a little longer depending on the
15 asset.
16 Q. Why did Lehman mark its books
17 every day?
18 A. We were required to mark our books
19 every day according to GAAP.
20 Q. Now, although you had the
21 information about loan positions, during these
22 negotiations before the bankruptcy, did you
23 also have -- did you ever see information that
24 valued all of the assets that Lehman held at
25 that time?

Page 20

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 Q. Okay.
3 A. That's just the neighborhood. I
4 don't think it was quite that high.
5 Q. And what was the approximate
6 amount of liabilities prior to the bankruptcy
7 that was associated with that loan book?
8 A. The net -- the net numbers are
9 what I was giving to you. So it was somewhere
10 between 20 and 50 billion was the total. I
11 don't recall. It was a net number. The
12 liabilities would net off the total.
13 Q. Meaning that it's the assets and
14 then you subtracted the liabilities.
15 A. To reach that number, yes.
16 Q. And who did you give this
17 information to at Barclays?
18 A. Rick Van Zijl and his team.
19 Q. Did you discuss the information
20 with them?
21 A. Yes.
22 Q. What type of questions were they
23 asking about it?
24 A. Line-by-line review of the loan
25 book.

Page 19

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 A. Did I ever see information that
3 valued all of the assets that Lehman held at
4 the time. No.
5 Q. Do you have an approximate amount
6 of what the total value of the assets that you
7 were looking at and conveying to Barclays was?
8 A. I don't recall.
9 Q. Do you have a sense of the range?
10 Was it more than \$50 billion?
11 A. It was in that neighborhood.
12 Strike that for a second.
13 You asked me if -- that we were
14 conveying to Barclays. That's not what I was
15 talking about. I was talking about the value
16 of our positions. Whether they were conveyed
17 or not is a whole separate issue.
18 Q. Okay. So do you have a sense of
19 what the value of the assets that Lehman held
20 were prior to the bankruptcy?
21 A. No.
22 Q. What was the 50 billion - very
23 estimate range - what were you trying to
24 describe there?
25 A. The loan book.

Page 21

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 Q. Did you have any discussion about
3 the method that Lehman was using to value the
4 loan book with Barclays?
5 A. They knew it was mark to market.
6 And that was our discussion.
7 Q. Did Barclays ever discuss
8 valuing -- whether there was an accurate
9 valuation of the loan book at the time?
10 A. That was the nature of our
11 discussions.
12 Q. And what in particular did anybody
13 at Barclays say about what the appropriate
14 value of the assets that you were discussing
15 should be?
16 A. Repeat that.
17 Q. Yeah. What was Barclays saying on
18 the topic of how these assets should be
19 valued?
20 A. They're asking how we came up with
21 whatever values we had and reviewing the value
22 of each line item that was material.
23 Q. Did they agree with the valuation?
24 A. Sometimes.
25 Q. Were there times that they

Page 22	Page 23
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 disagreed with the valuation?</p> <p>3 A. I'm sure there were.</p> <p>4 Q. Did they ever convey a</p> <p>5 disagreement about the valuation?</p> <p>6 A. Yes.</p> <p>7 Q. And what did they say?</p> <p>8 A. We disagree with this mark.</p> <p>9 Q. Who in particular said anything</p> <p>10 that disagreed with the mark?</p> <p>11 A. Jason Moynihan who was their</p> <p>12 trader.</p> <p>13 Q. Anyone else?</p> <p>14 A. Not that I recall.</p> <p>15 Q. And what did Jason Moynihan say on</p> <p>16 the topic of a disagreement about the</p> <p>17 valuation of a mark of the assets you were</p> <p>18 discussing?</p> <p>19 A. If he disagreed with the mark, he</p> <p>20 would say I think this mark is either too high</p> <p>21 or too low.</p> <p>22 Q. Did he give a basis why he thought</p> <p>23 that they were too high or to low?</p> <p>24 A. He would have a different view of</p> <p>25 the market.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did he say anything about what his</p> <p>3 view of the market was?</p> <p>4 A. The ones that he thought were too</p> <p>5 high he said he thought the market was lower.</p> <p>6 The ones that he thought were too low he said</p> <p>7 he thought the market was higher.</p> <p>8 Q. Did he provide any further basis</p> <p>9 for that?</p> <p>10 A. No.</p> <p>11 Q. And how did you respond?</p> <p>12 A. Depends on which line item. Some</p> <p>13 we said you're wrong and here's the most</p> <p>14 recent trade. Others we would have said fair</p> <p>15 point, maybe we should move that down a</p> <p>16 little. Others we said we didn't -- if they</p> <p>17 were marked to model we told him why, because</p> <p>18 there wasn't a current market, here's how the</p> <p>19 value compared to others. It was an</p> <p>20 interactive discussion.</p> <p>21 Q. How confident were you in Lehman's</p> <p>22 processes of marking the loan book in</p> <p>23 determining a value that was appropriate for</p> <p>24 those assets?</p> <p>25 MR. STERN: Objection to the form.</p>
Page 24	Page 25
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 You can answer.</p> <p>3 A. I was very confident in the way we</p> <p>4 marked our loan book.</p> <p>5 Q. Were you part of the modeling</p> <p>6 process for those that did not have a current</p> <p>7 market position?</p> <p>8 A. Yes.</p> <p>9 Q. And can you generally describe</p> <p>10 what was the model that Lehman was using for</p> <p>11 valuing assets that didn't have a current</p> <p>12 market price?</p> <p>13 A. There were various ways to mark</p> <p>14 positions to model. So there's not one simple</p> <p>15 way to do that.</p> <p>16 Q. Approximately how many ways?</p> <p>17 A. Each one -- each loan could be</p> <p>18 different. There could be many different</p> <p>19 types of ways.</p> <p>20 Q. What were some of the inputs that</p> <p>21 you would look to in trying to determine the</p> <p>22 appropriate value of an asset if there wasn't</p> <p>23 a current market for it?</p> <p>24 A. Value of related assets. Value of</p> <p>25 comparable assets. Direction of the market.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Value of collateral. Interest rates. Changes</p> <p>3 in spread and ratings. M&A activity.</p> <p>4 There's many, many other factors</p> <p>5 you consider.</p> <p>6 Q. Did you have any further</p> <p>7 conversations about position with anyone at</p> <p>8 Barclays leading -- in the negotiations before</p> <p>9 the bankruptcy?</p> <p>10 MR. STERN: About positions?</p> <p>11 MS. TAGGART: Yes.</p> <p>12 MR. STERN: You mean assets as</p> <p>13 opposed to --</p> <p>14 MS. TAGGART: Yes. Positions of</p> <p>15 assets.</p> <p>16 A. I don't quite understand the</p> <p>17 question.</p> <p>18 I'll speak loudly.</p> <p>19 Q. Okay.</p> <p>20 A. You can go.</p> <p>21 Q. Was there any further conversation</p> <p>22 about any valuation of any of the assets that</p> <p>23 you were discussing with Barclays?</p> <p>24 A. You said before the bankruptcy on</p> <p>25 your last question. Do you want me to limit</p>

Page 26	Page 27
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 it to before or after?</p> <p>3 Q. I do. Before.</p> <p>4 A. There were numerous discussions</p> <p>5 along the lines that I previously described.</p> <p>6 Q. So you had further discussions</p> <p>7 about the appropriate value of the assets?</p> <p>8 A. Correct.</p> <p>9 Q. Any other topics?</p> <p>10 A. Before the bankruptcy. Yes.</p> <p>11 Q. What other topics?</p> <p>12 A. Private equity.</p> <p>13 Q. Anything else?</p> <p>14 A. Contracts.</p> <p>15 Q. Anything else?</p> <p>16 A. DIP financing. Building. Data</p> <p>17 centers. Numerous other issues.</p> <p>18 Q. And what was generally the topics</p> <p>19 that you discussed surrounding private equity?</p> <p>20 A. The nature of the positions. The</p> <p>21 value of the positions. And how we came to</p> <p>22 those values.</p> <p>23 Q. Was there a time that you were</p> <p>24 justifying Lehman's value of the positions in</p> <p>25 the private equity?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. I was explaining Lehman's</p> <p>3 positions. I didn't think I needed to justify</p> <p>4 them.</p> <p>5 Q. Why didn't you think that you</p> <p>6 needed to justify them?</p> <p>7 A. It's not what I was asked to do.</p> <p>8 Q. Were you reporting the results of</p> <p>9 these discussions to anyone at Lehman?</p> <p>10 A. Yes.</p> <p>11 Q. Who?</p> <p>12 A. Alex Kirk.</p> <p>13 Q. Anyone else?</p> <p>14 A. The entire team working on the</p> <p>15 transaction.</p> <p>16 Q. How did your discussions with</p> <p>17 Barclays before the bankruptcy come to an end?</p> <p>18 A. We had a transaction to buy the</p> <p>19 entire company, save for the real estate, the</p> <p>20 private equity, and the mortgages. And that</p> <p>21 transaction was approved by Barclays. And</p> <p>22 then we were told that the FSA required</p> <p>23 shareholder vote per Barclay's charter unless</p> <p>24 the US government was willing to stand behind</p> <p>25 some portion of the losses. And the treasury</p>
Page 28	Page 29
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 and Fed didn't think that was a good idea.</p> <p>3 Q. Was there a price associated with</p> <p>4 that transaction that was agreed to?</p> <p>5 A. It was a -- I don't recall the</p> <p>6 exact price. It's well known. It's not a big</p> <p>7 secret.</p> <p>8 Q. Were you involved in discussions</p> <p>9 regarding a possible transaction with Barclays</p> <p>10 after the bankruptcy of LBHI?</p> <p>11 A. Yes.</p> <p>12 Q. And I believe that bankruptcy is</p> <p>13 on the morning of September 15th. That's the</p> <p>14 Monday. Is that consistent with your memory?</p> <p>15 A. Correct.</p> <p>16 Q. What was the first thing that you</p> <p>17 did after the bankruptcy related at all to a</p> <p>18 potential transaction with Barclays?</p> <p>19 A. It's a broad question. Do you</p> <p>20 want to narrow it or would you like me to give</p> <p>21 you a broad answer?</p> <p>22 Q. I'd like to know the first thing</p> <p>23 that you did and I'm willing to take that full</p> <p>24 answer of the first thing.</p> <p>25 A. The first thing I did was take a</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 deep breath and think about how we had to hold</p> <p>3 an organization together in order to have any</p> <p>4 transaction.</p> <p>5 Q. How did you first learn that there</p> <p>6 were still negotiations happening with</p> <p>7 Barclays even after the bankruptcy?</p> <p>8 A. I was involved in the discussions</p> <p>9 and decisions to try to go back to them after</p> <p>10 the SEC and the Fed told us to file.</p> <p>11 Q. Who else was involved in those</p> <p>12 discussions?</p> <p>13 A. Alex Kirk, Bart McDade. Mark</p> <p>14 Shafir. Mark Shapiro. Steve Berkenfeld. To</p> <p>15 some degree, Dick Fuld. Probably about it in</p> <p>16 those direct discussions.</p> <p>17 Q. When was the first discussion that</p> <p>18 you had on this topic?</p> <p>19 A. Sometime on the morning -- I</p> <p>20 believe sometime on the morning or early day</p> <p>21 of the 15th.</p> <p>22 Q. And what do you remember being</p> <p>23 said during -- tell me your memory of that</p> <p>24 meeting.</p> <p>25 A. I don't recall a specific meeting.</p>

Page 30	Page 31
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 I said that's when I had first discussion</p> <p>3 about it.</p> <p>4 Q. Tell me what you recall about the</p> <p>5 first discussion about it.</p> <p>6 A. We generally talked about trying</p> <p>7 to find an alternate transaction and possible</p> <p>8 ways to do that as the firm was getting shut</p> <p>9 down by its clearing bank and being shut off</p> <p>10 by its customers.</p> <p>11 Q. And was there any discussion in</p> <p>12 your first discussions on the morning of the</p> <p>13 15th about what the transaction might look</p> <p>14 like with Barclays?</p> <p>15 A. Yes.</p> <p>16 Q. And what was described as possible</p> <p>17 transactions with Barclays and how that might</p> <p>18 look?</p> <p>19 A. The transaction of the assets of</p> <p>20 the broker -- sale of the assets of the</p> <p>21 broker/dealer.</p> <p>22 Q. Who do you mean by the</p> <p>23 broker/dealer?</p> <p>24 A. Lehman Brothers, Inc.</p> <p>25 Q. And was there a discussion at that</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 time about which assets might be conveyed in</p> <p>3 that sort of transaction?</p> <p>4 A. Generally the business and the</p> <p>5 assets related to operating the business.</p> <p>6 Q. So after your initial discussion</p> <p>7 about the possibility of this type of</p> <p>8 transaction what did you do next? And this is</p> <p>9 again on Monday, September 15th.</p> <p>10 A. Again, incredibly broad question.</p> <p>11 Q. Well, I'll take what you did next.</p> <p>12 A. I'm quite sure I might have eaten</p> <p>13 something.</p> <p>14 Q. Okay. When was the next time that</p> <p>15 you participated in any way in activities that</p> <p>16 would lead to a transaction with Barclays?</p> <p>17 A. It was constant.</p> <p>18 Q. Okay. Well, what are some of the</p> <p>19 activities that you did then?</p> <p>20 A. Again, worked on keeping the firm</p> <p>21 together. By that I mean make sure the lights</p> <p>22 stay on, security stays in place. The</p> <p>23 building continues to operate. Employees show</p> <p>24 up to work. Contact customers.</p> <p>25 Q. What was another task that you did</p>
Page 32	Page 33
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 related to the negotiations with Barclays on</p> <p>3 the 15th besides keeping the firm together?</p> <p>4 A. Consider how to finance the firm.</p> <p>5 Q. How do you mean that?</p> <p>6 A. To obtain money to operate the</p> <p>7 firm on a day-to-day basis as well as to</p> <p>8 finance the positions that the firm held.</p> <p>9 Q. What's financing positions?</p> <p>10 A. Obtaining capital to support the</p> <p>11 value of the positions that you hold.</p> <p>12 Q. And on the 15th what did you do</p> <p>13 related to considering how to finance the</p> <p>14 firm?</p> <p>15 A. We worked on a DIP financing. And</p> <p>16 I worked constantly with treasury regarding</p> <p>17 issues that arose with respect to repo</p> <p>18 financing as well as clearing bank issues.</p> <p>19 Q. What's DIP financing?</p> <p>20 A. Debtor-in-possession.</p> <p>21 Q. And what did you do relating to</p> <p>22 working on DIP financing?</p> <p>23 A. In sum, we obtained a DIP from</p> <p>24 Barclays.</p> <p>25 Q. Is a DIP like a loan from Barclays</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 but it happens at a time that it's -- the</p> <p>3 company is in bankruptcy?</p> <p>4 A. Yes.</p> <p>5 Q. Why did you choose Barclays as the</p> <p>6 funder for that?</p> <p>7 A. They were the logical choice.</p> <p>8 Q. Was it related to the potential</p> <p>9 transaction with them?</p> <p>10 A. Yes.</p> <p>11 Q. And do you know the amount of DIP</p> <p>12 financing that you got from Barclays?</p> <p>13 A. I don't recall.</p> <p>14 MS. TAGGART: Would you mark this</p> <p>15 as the next exhibit. I think it's 337B.</p> <p>16 (Deposition Exhibit 337B, Pledge</p> <p>17 Agreement dated as of September 7, 2008</p> <p>18 among Lehman Brothers Holdings, Inc., as</p> <p>19 Grantor and Barclays Bank PLC, as</p> <p>20 Collateral Agent, marked for</p> <p>21 identification as of this date.)</p> <p>22 BY MS. TAGGART:</p> <p>23 Q. Do you recognize this document?</p> <p>24 A. No.</p> <p>25 Q. If you turn to the third-to-last</p>

Page 34	Page 35
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 page so it has on the bottom 943 -- actually,</p> <p>3 for the record, let me identify Exhibit 337B</p> <p>4 is a document that goes from Bates</p> <p>5 BCI-CG-00058925 through -945. And it's</p> <p>6 entitled Pledge Agreement dated of September</p> <p>7 17th, 2008 among Lehman Brothers Holding, Inc.</p> <p>8 and Barclays Bank PLC.</p> <p>9 And if you look --</p> <p>10 MR. STERN: Why don't you first</p> <p>11 take a chance -- take a moment to review</p> <p>12 the document as a whole and then turn to</p> <p>13 the page that is the third-to-last page</p> <p>14 in the exhibit.</p> <p>15 A. To make it really easy first or</p> <p>16 faster, that's my signature. This is a pledge</p> <p>17 agreement.</p> <p>18 Q. Is this document related to DIP</p> <p>19 financing with Barclays?</p> <p>20 A. It is.</p> <p>21 Q. Can you describe generally what</p> <p>22 is -- this document is?</p> <p>23 A. It's a security arrangement.</p> <p>24 Q. Was there collateral that was</p> <p>25 pledged as part of this?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Do you know the amount of the</p> <p>4 collateral?</p> <p>5 A. Do you mean the dollar value or</p> <p>6 the face amount or how many different things</p> <p>7 were included?</p> <p>8 Q. I mean the value of the</p> <p>9 collateral, what Lehman believed the value of</p> <p>10 the collateral was that was security for this</p> <p>11 loan.</p> <p>12 MR. STERN: Objection to the form.</p> <p>13 A. No.</p> <p>14 Q. Do you know how much cash was --</p> <p>15 was there cash conveyed as part of this doc --</p> <p>16 contract?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. I don't recall.</p> <p>19 Q. You can put that aside.</p> <p>20 Then what did you do with the</p> <p>21 treasury related to repo financing?</p> <p>22 A. I didn't do anything with the</p> <p>23 treasury related to repo financing.</p> <p>24 Q. Did you have discussions at all</p> <p>25 about -- with the treasury about repo</p>
Page 36	Page 37
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 financing?</p> <p>3 A. I did not have any discussions</p> <p>4 with the treasury regarding repo financing.</p> <p>5 Q. I'm sorry. Maybe I'm misreading</p> <p>6 my notes but what were you describing was your</p> <p>7 activity on the 15th that related to treasury</p> <p>8 and repo financing?</p> <p>9 A. On the 14th I had discussions with</p> <p>10 the Fed and the SEC regarding Lehman having to</p> <p>11 file. From the 14th on, there were</p> <p>12 intermittent discussions, sometimes including</p> <p>13 me, via phone regarding Lehman's repo and the</p> <p>14 Fed's involvement in Lehman's repo.</p> <p>15 If I said the treasury was</p> <p>16 involved in that I believe that's a</p> <p>17 misstatement. The treasury was involved in</p> <p>18 the decision, as I understand it, not to</p> <p>19 provide support for the original transaction.</p> <p>20 Q. Was there a time that the Fed and</p> <p>21 Lehman entered into a repo transaction?</p> <p>22 A. Yes.</p> <p>23 Q. And what is a repo transaction?</p> <p>24 A. It's a repurchase agreement.</p> <p>25 Q. During your time at Lehman</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Brothers did you work on repo agreements?</p> <p>3 A. Yes.</p> <p>4 Q. Approximately what number of repo</p> <p>5 agreements have you worked on when you worked</p> <p>6 at Lehman?</p> <p>7 A. I don't know.</p> <p>8 Q. Is it over ten?</p> <p>9 A. It's probably in the ten to 20</p> <p>10 range.</p> <p>11 Q. And in a repurchase agreement,</p> <p>12 what's the general structure that makes it a</p> <p>13 repurchase agreement?</p> <p>14 A. The general structure is that the</p> <p>15 first party sells assets to the second party</p> <p>16 with an agreement and obligation of the first</p> <p>17 party to buy them back in an agreement -- in</p> <p>18 an obligation of the second party to sell them</p> <p>19 back.</p> <p>20 Q. As part -- just generally in repo</p> <p>21 transactions is the party that receives money,</p> <p>22 do they pledge collateral as security for that</p> <p>23 money?</p> <p>24 A. Can you say that again?</p> <p>25 MS. TAGGART: Can you read it</p>

Page 38	Page 39
<p>1 J. SEERY - HIGHLY CONFIDENTIAL 2 again. 3 THE COURT REPORTER: Sure. 4 (Record read.) 5 A. No. 6 Q. In the -- do they give anything as 7 security for the money that they receive? 8 A. That's not the structure of a 9 repo. 10 Q. Is collateral involved at all in 11 the structures of repos? 12 A. No. 13 Q. What about the repo that was with 14 the Fed, was collateral pledged as security? 15 A. No. 16 Q. Was collateral given to the Fed? 17 A. That's not the structure of a repo 18 transaction. 19 Q. What is the structure of a repo 20 transaction? 21 A. As I described previously. 22 Q. Could you say it again, then? 23 THE WITNESS: Can you read it 24 back. 25 MR. STERN: Francis, it's about 30</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL 2 lines ahead. 3 MS. TAGGART: Ah, I see. You 4 don't need to. 5 Q. What did you mean by the first 6 party selling assets to the second? How does 7 that happen? 8 A. The first party grants to the 9 second party the right to purchase certain 10 assets. The second party executes that right 11 and takes ownership of those assets. 12 Q. Have you heard the term "haircut"? 13 A. Yes. 14 Q. And what does the term haircut 15 mean in the context of repo transactions? 16 A. The haircut is the difference 17 between the value of the assets conveyed and 18 the price paid for those assets. 19 Q. And generally in repo transactions 20 is the -- are assets given that are at a 21 higher value than the price that is paid? 22 MR. STERN: Objection to the form. 23 You can answer. 24 A. Yes. 25 Q. How's the amount of the haircut</p>
Page 40	Page 41
<p>1 J. SEERY - HIGHLY CONFIDENTIAL 2 generally determined in repo transactions? 3 A. There is no general way to 4 determine the haircut in a repo transaction. 5 Q. Why is that? 6 A. Because it depends on the assets. 7 Depends on the market. Depends on the 8 participants. 9 Now, when you talk about repo 10 transactions just so we're clear -- and what 11 you asked me about is you asked me about repo 12 transactions generally. There are thousands 13 of different kinds of repo transactions. 14 Q. Okay. Well, let's -- 15 A. They could be range -- a pawn 16 arrangement could be described as a repo 17 transaction if you wanted to show the document 18 in such a way. 19 Q. Okay. 20 A. And then other ways to finance the 21 firm's positions. 22 Q. What about in repo transactions 23 with the Fed? Is there a general procedure 24 for determining the amount of the haircut? 25 A. I don't know that repo</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL 2 transactions with the Fed are generally done. 3 Q. Okay. Well, let's focus on the 4 repo transaction that was done with the Fed. 5 First of all, what was your 6 involvement in -- let's start with setting up 7 the repo transaction that Lehman did with the 8 Fed. 9 A. I had none. 10 Q. Do you know when it was set up? 11 A. No. 12 Q. When was the first time that you 13 became aware of it? 14 A. The week of the 15th. 15 Q. And how did you become aware of 16 it? 17 A. The prior week when we were down 18 at the Fed the Fed was very concerned with the 19 repo market for financing securities firms and 20 banks. Subsequent to Lehman's filing some of 21 their fears were confirmed and the repo market 22 began to fall apart. My understanding is that 23 the Fed stepped in and became a repurchase 24 agreement participant in order to fund Lehman 25 Brothers' position and maybe the positions of</p>

Page 42

1 J. SEERY - HIGHLY CONFIDENTIAL
2 other firms. I don't know.
3 Q. Do you know the price that was
4 paid in the repo transaction?
5 A. No.
6 Q. Do you -- were you at all
7 involved -- or do you know what collateral was
8 sold to the Fed as part of the repo
9 transaction?
10 A. No.
11 Q. What was your involvement after
12 learning of the transaction generally
13 regarding this repo transaction with the Fed?
14 MR. STERN: Objection to the form.
15 A. I don't understand your question.
16 Q. After you learned -- were you at
17 all involved in anything related to the Fed
18 repo transaction?
19 A. No.
20 Q. Did you have any discussions with
21 anyone at Lehman related to the Fed repo
22 transaction?
23 A. I believe I did.
24 Q. Whom did you have discussions
25 with?

Page 44

1 J. SEERY - HIGHLY CONFIDENTIAL
2 discuss the Fed repo transaction at all on the
3 15th?
4 A. I don't recall.
5 Q. What did you do relating to
6 valuing the capital when you were considering
7 how to finance the firm on September 15th?
8 A. I don't understand the question.
9 Q. I think when you were describing
10 your activities on the 15th under the topic of
11 I considered how to finance the firm, one
12 issue related to financing positions was to
13 obtain capital support and the value of the
14 capital.
15 Do you know when you meant related
16 to your activity related to the value of the
17 capital?
18 A. If I said something about the
19 value of capital, I misspoke. I don't believe
20 I said that.
21 Q. What were the clearing bank issues
22 that you were dealing with on the 15th?
23 A. We had significant concern that
24 JPMorgan, and to a lesser degree Citibank,
25 perhaps State Street, would not act as our

Page 43

1 J. SEERY - HIGHLY CONFIDENTIAL
2 A. I believe I discussed it with Alex
3 Kirk, Paolo Tonucci. And there may be others.
4 Q. And what topics were you
5 discussing with them?
6 A. Generally how to take the Fed out
7 of its repo position.
8 Q. And what was said on that topic?
9 A. The Fed made clear before the
10 filing, and I understand subsequent to the
11 filing, that it did not intend to finance
12 Lehman Brothers.
13 Before the filing they made very
14 clear that they wanted us to file and they
15 wanted out of their funding of any Lehman
16 positions.
17 And during that week my
18 understanding, although I did not have the
19 conversations directly, is they reiterated the
20 positions that they took on Sunday the 14th
21 and demanded to be taken out of their repo.
22 Q. I'll probably turn back to this
23 Fed repo transaction but let's just stay with
24 the 15th.
25 Did you do anything else --

Page 45

1 J. SEERY - HIGHLY CONFIDENTIAL
2 clearing bank and clear trades.
3 Q. What did you do related to that?
4 A. Considered ways to expedite a
5 transaction so that the firm wouldn't fall
6 apart.
7 Q. And you mean expedite a
8 transaction such as a transaction with
9 Barclays?
10 A. That would have been one way, yes.
11 Q. What are the other ways that you
12 were considering dealing with this issue
13 relating to the clearing bank?
14 A. Maybe we could find another
15 clearing bank.
16 Q. Did you think that you were able
17 to find another clearing bank?
18 A. No. You can't find another
19 clearing bank.
20 Q. Why not?
21 A. It's far too complicated a
22 relationship to put together in a day or two.
23 There aren't many clearing banks. And while
24 they act as financial intermediaries to make
25 the entire system -- financial system work,

Page 46	Page 47
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 they're not regulated as such so they're</p> <p>3 allowed to do whatever they want subject to</p> <p>4 their contracts.</p> <p>5 Q. And why did you think that</p> <p>6 JPMorgan was going to stop clearing trades?</p> <p>7 A. I was told that they were failing</p> <p>8 to clear trades.</p> <p>9 Q. What impact would it have on</p> <p>10 Lehman Brothers' business if its clearing bank</p> <p>11 failed to clear trades?</p> <p>12 A. There wouldn't be a business.</p> <p>13 Q. Why not?</p> <p>14 A. Because counterparties count on</p> <p>15 being able to trade with you, count on the</p> <p>16 sanctity of that trade, when they say it's</p> <p>17 done that it is in fact done, and take other</p> <p>18 financial actions related to the trade that</p> <p>19 they engaged in. So if the trade is not</p> <p>20 cleared that implicates all of their other</p> <p>21 positions and their other actions.</p> <p>22 Q. Let's go back to the 15th. You</p> <p>23 were describing your activities and they were</p> <p>24 general categories of you were doing</p> <p>25 activities related to keeping the firm</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 together and considering how to finance the</p> <p>3 firm.</p> <p>4 Were there other activities that</p> <p>5 you were involved with on the 15th?</p> <p>6 A. I think that general description</p> <p>7 is sufficient.</p> <p>8 Q. Were you at all involved in</p> <p>9 negotiations with Barclays related to a</p> <p>10 potential transaction? Still staying on the</p> <p>11 15th.</p> <p>12 A. Yes.</p> <p>13 Q. In what way were you involved?</p> <p>14 A. I believe on that date -- and my</p> <p>15 dates might be slightly off -- on that date we</p> <p>16 were discussing the structure of a</p> <p>17 transaction, how you could accomplish a</p> <p>18 transaction swiftly before the firm collapsed,</p> <p>19 and how to finance the transaction between</p> <p>20 agreement and closing.</p> <p>21 Q. Tell me everybody at Lehman that</p> <p>22 you had discussions with on the 15th that</p> <p>23 related in any way to negotiations with</p> <p>24 Barclays.</p> <p>25 A. Around approximately that date --</p>
Page 48	Page 49
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 and, again, the days all ran together as they</p> <p>3 were basically 24-hour days -- the names that</p> <p>4 I previously gave you which were Kirk, McDade,</p> <p>5 Berkenfeld, Shafir, Shapiro, were the key</p> <p>6 senior people. Tonucci. Lowitt. Those were</p> <p>7 the key senior people and obviously -- or</p> <p>8 maybe not so obviously, I had numerous and</p> <p>9 constant discussions with the people who</p> <p>10 worked with or for me in various parts of the</p> <p>11 firm.</p> <p>12 Q. Did you speak directly with anyone</p> <p>13 at Barclays related to negotiations?</p> <p>14 A. When?</p> <p>15 Q. Let's stay on the 15th.</p> <p>16 A. Again, in the first part of that</p> <p>17 week, without being firm that it's the 15th, I</p> <p>18 certainly had negotiations with Van Zijl.</p> <p>19 Discussions with LaRocco. Some discussions</p> <p>20 with Keegan. And their various team members.</p> <p>21 Q. What were the topics that you</p> <p>22 discussed with Van Zijl?</p> <p>23 A. How Van Zijl was limited to the</p> <p>24 DIP.</p> <p>25 Q. What about with LaRocco?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. The DIP and general transaction</p> <p>3 structure.</p> <p>4 Q. What in particular was discussed</p> <p>5 related to transaction structure between you</p> <p>6 and LaRocco?</p> <p>7 A. The DIP timing. Structure of an</p> <p>8 asset sale. How a 363 sale of assets would</p> <p>9 work in the bankruptcy court. How we would</p> <p>10 continue to stay in business to make sure</p> <p>11 there was a business that we could deliver at</p> <p>12 closing.</p> <p>13 Q. Did you have any discussions with</p> <p>14 Mr. LaRocco regarding the value of assets that</p> <p>15 Lehman had or would convey?</p> <p>16 A. Not in that first part of the week</p> <p>17 that I recall, no.</p> <p>18 Q. What were the topics that you</p> <p>19 discussed with Mr. Keegan?</p> <p>20 A. In the early part of the week very</p> <p>21 limited. I don't -- actually don't remember.</p> <p>22 I'm not sure that Mike was there in that first</p> <p>23 two days.</p> <p>24 Q. In those first two days, any other</p> <p>25 discussions with anyone at Barclays?</p>

Page 50	Page 51
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Now, in these first two days --</p> <p>4 and maybe it's easier if we have a time period</p> <p>5 that it -- you know, was there a time that</p> <p>6 there became a written agreement between</p> <p>7 Barclays and Lehman?</p> <p>8 A. Yes, there was a time there became</p> <p>9 a written agreement.</p> <p>10 Q. Let's mark -- actually, this is</p> <p>11 already a marked exhibit so I'll...</p> <p>12 I've put before you a document</p> <p>13 that's been marked Exhibit 1 previously and is</p> <p>14 called an Execution Copy of Asset Purchase</p> <p>15 Agreement among Lehman Brothers Holdings,</p> <p>16 Inc., others, and Barclays Capital dated</p> <p>17 September 16th, 2008.</p> <p>18 Do you recognize this document?</p> <p>19 A. I do.</p> <p>20 Q. And what is it generally?</p> <p>21 A. It is an Asset Purchase Agreement</p> <p>22 among Lehman Brothers Holdings, Inc., Lehman</p> <p>23 Brothers, Inc., LB745, LLC and Barclays</p> <p>24 Capital, Inc.</p> <p>25 Q. Okay. For now let's just use this</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 as the time frame and I want to talk -- when I</p> <p>3 now ask questions about your activities it's</p> <p>4 leading up until this Asset Purchase Agreement</p> <p>5 is first executed.</p> <p>6 Were you involved in providing</p> <p>7 information to the negotiations team that led</p> <p>8 up to this asset purchase agreement?</p> <p>9 A. Was I in -- I'm trying to</p> <p>10 understand the question. Was I involved in</p> <p>11 providing information to the --</p> <p>12 Q. To the Lehman negotiation team</p> <p>13 related to this transaction.</p> <p>14 A. I certainly discussed aspects of</p> <p>15 the business with the team members and those</p> <p>16 discussions related to this agreement.</p> <p>17 Q. What were the topics that you were</p> <p>18 discussing with team members related to the</p> <p>19 transaction?</p> <p>20 A. Generally how to deliver the</p> <p>21 franchise or business to the buyer.</p> <p>22 Q. What did you say on that topic?</p> <p>23 A. That we needed the get it done</p> <p>24 very, very quickly. That we needed to remain</p> <p>25 in business pending the closing. That we had</p>
Page 52	Page 53
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 to have sufficient financing both with respect</p> <p>3 to positions and day-to-day operations to keep</p> <p>4 the business going.</p> <p>5 Q. Anything else?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did you discuss what assets were</p> <p>8 available to be part of a transaction?</p> <p>9 A. Just generally the assets required</p> <p>10 to operate the business.</p> <p>11 Q. And what were the categories of</p> <p>12 assets that you were discussing that you</p> <p>13 believed were required to operate the</p> <p>14 business?</p> <p>15 A. Generally the physical, tangible</p> <p>16 assets that you need to operate the business.</p> <p>17 Some of the intangible assets, as well as the</p> <p>18 positions that you needed.</p> <p>19 Q. Give me an example of an</p> <p>20 intangible asset that you would be discussing.</p> <p>21 A. Trademark.</p> <p>22 Q. What did you discuss related to</p> <p>23 the positions in regard to assets that would</p> <p>24 be part of a potential transaction?</p> <p>25 A. Generally that you needed to have</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 positions to be open for business and continue</p> <p>3 to trade with the customers that you put those</p> <p>4 positions on with.</p> <p>5 Q. Whom did you discuss this topic</p> <p>6 with, being the positions that might be needed</p> <p>7 to be part of a transaction?</p> <p>8 A. Generally with Berkenfeld,</p> <p>9 Shapiro, Shafir.</p> <p>10 Q. Did you provide any infor -- did</p> <p>11 you gather any data during this time leading</p> <p>12 up to the asset purchase agreement?</p> <p>13 A. I think I generally described</p> <p>14 previously gathering a myriad of data for</p> <p>15 various purposes. So the answer to that</p> <p>16 question would be yes.</p> <p>17 Q. Well, from the time of the</p> <p>18 bankruptcy until the asset purchase agreement</p> <p>19 what data did you provide to anybody at either</p> <p>20 Lehman's or Barclays related to a potential</p> <p>21 transaction?</p> <p>22 A. General discussions regarding the</p> <p>23 market, treatment of our business in the</p> <p>24 market, employee issues, customer issues.</p> <p>25 That's about it.</p>

Page 54	Page 55
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you provide any information</p> <p>3 related to the marks for any of the positions</p> <p>4 that Lehman had?</p> <p>5 A. We continued to mark our book on a</p> <p>6 daily basis.</p> <p>7 Q. And what do you mean by you</p> <p>8 continued to mark the book on a daily basis?</p> <p>9 A. We stayed abreast of the market</p> <p>10 and if there were changes in the market we</p> <p>11 changed the marks of our positions.</p> <p>12 Q. And was there ever a time that</p> <p>13 Lehman Brothers stopped marking its books</p> <p>14 until the transaction with Barclays?</p> <p>15 A. I don't know.</p> <p>16 Q. How do you know that Lehman</p> <p>17 continued to mark the books on a daily basis?</p> <p>18 A. The marks that I was responsible</p> <p>19 for continued to be updated. I really can't</p> <p>20 speak to anybody else's marks.</p> <p>21 Q. Which marks were you responsible</p> <p>22 for?</p> <p>23 A. I previously described the loan</p> <p>24 book and those positions.</p> <p>25 Q. And did you continue to believe</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 that the marks that Lehman had on the book for</p> <p>3 the marks that you were responsible at least</p> <p>4 were accurate?</p> <p>5 A. Yes.</p> <p>6 Q. And did you continue to mark the</p> <p>7 positions for the ones that you were</p> <p>8 responsible for related to loan positions by</p> <p>9 either the current market price or the good</p> <p>10 faith estimate of where the asset would trade</p> <p>11 under a reasonable period of time?</p> <p>12 A. Yes.</p> <p>13 Q. Did you continue to use the same</p> <p>14 method that was used before LBHI declared</p> <p>15 bankruptcy?</p> <p>16 A. Yes.</p> <p>17 MS. TAGGART: Why don't we just</p> <p>18 take a short break.</p> <p>19 MR. STERN: Fine.</p> <p>20 MS. TAGGART: Five or ten.</p> <p>21 (Recess taken.)</p> <p>22 BY MS. TAGGART:</p> <p>23 Q. What time of day did Lehman mark</p> <p>24 its books?</p> <p>25 A. There wasn't a specific time.</p>
Page 56	Page 57
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 They were marked throughout the day and</p> <p>3 checked at the end of the day.</p> <p>4 Q. What about on Monday, the 15th?</p> <p>5 Was that also true that they were marked</p> <p>6 throughout the day and then checked at the end</p> <p>7 of the day?</p> <p>8 A. I don't know. It was a hectic</p> <p>9 day.</p> <p>10 Q. Were you involved at all in</p> <p>11 providing information about the current marks</p> <p>12 to the negotiation team for any of the assets?</p> <p>13 A. Not that I recollect.</p> <p>14 Q. Have you ever heard the term book</p> <p>15 value?</p> <p>16 A. Yes.</p> <p>17 Q. What does that mean?</p> <p>18 A. It's the amount -- the value of an</p> <p>19 asset on someone's books.</p> <p>20 Q. What's the relationship between</p> <p>21 the marks that Lehman was making on this daily</p> <p>22 basis and the book value of an asset?</p> <p>23 A. I'm not an accountant but they</p> <p>24 should have been really the same. The book</p> <p>25 value would be the value -- normally the book</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 value is determined as the amount you pay for</p> <p>3 an asset less any impairment charges you've</p> <p>4 taken against it or increased by any gains</p> <p>5 with respect to the value of that asset.</p> <p>6 Usually the impairments and the gains would be</p> <p>7 put in a different section of the asset or</p> <p>8 liability side of the balance sheet.</p> <p>9 Q. Now, you said that you knew that</p> <p>10 Lehman was marking the books for ones that you</p> <p>11 were in charge of. Was that in the fixed</p> <p>12 income loan area?</p> <p>13 A. Yes.</p> <p>14 Q. And you'd mentioned earlier a</p> <p>15 number of products that were under the fixed</p> <p>16 income loan area. Do you know if Barclays</p> <p>17 ended up purchasing any of those assets that</p> <p>18 were under your purview of the fixed income</p> <p>19 loan area?</p> <p>20 A. Yeah. It's just called the loan</p> <p>21 area. It would be easier. Fixed income was</p> <p>22 again the division I worked in.</p> <p>23 The question, did they purchase</p> <p>24 assets related to the loan business?</p> <p>25 Q. Did they purchase any of the</p>

Page 58

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **products that were under the loan area?**
3 A. They purchased the business. I
4 think you're getting at did they purchase
5 positions.
6 Q. Okay. Did they purchase any of
7 the positions that fell under the loan area?
8 A. I don't believe they purchased any
9 of the positions in the loan business.
10 Q. Do you know why not?
11 A. Do I know why not. No, I don't
12 know why not.
13 Q. Were you involved in any of the
14 private equity positions on the 15th and 16th?
15 A. No.
16 Q. What other activities were you
17 involved in related to the Barclays
18 negotiation before the signing of the APA?
19 A. I think I've generally described
20 all of them.
21 (Pause on the record.)
22 Q. So I've put before you a document
23 that previously has been marked as Exhibit 19
24 and it's dated 9/16/2008. Have you ever seen
25 this document before?

Page 60

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 Q. What information did you provide
3 that may have been used in making the document
4 in Exhibit 19?
5 MR. STERN: Objection to the form.
6 A. I generally provided information
7 regarding the structure of the transaction,
8 how to -- you know, why you had to have
9 liabilities offsetting positions, the
10 volatility of the market which was extreme.
11 And I may have had a discussion about one or
12 two items. I can't recall.
13 Q. What information did you provide
14 regarding the structure of the transaction?
15 A. I think I previously said that
16 regarding the structure you needed to transfer
17 assets that would enable to business to run.
18 That would also encompass liabilities.
19 Q. Why it your understanding that as
20 part of the transaction it was intended that
21 Barclays would continue to run the business
22 after the transaction?
23 A. Yes.
24 Q. And that as -- in that transaction
25 then Barclays needed whatever assets it needed

Page 59

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 A. I believe I have.
3 Q. Do you know -- what is it?
4 A. It is a one-page simple,
5 high-level asset and liability statement.
6 Q. What was the first time you saw
7 it?
8 A. During the week of September 15th.
9 Q. Who gave it to you?
10 A. I don't recall.
11 Q. Did you see early iterations of
12 this?
13 A. I don't know if they were earlier
14 or later. I've seen multiple iterations of
15 this document.
16 Q. Did you contribute to making this
17 document or documents like it?
18 A. I'm not quite sure how to answer
19 your question. If you are asking did I have
20 anything to do with providing information that
21 may have been used in this document, I think I
22 did. I can't say whether I actually had an
23 impact on any particular number on this
24 document. I did not type this document up or
25 give any of these numbers directly.

Page 61

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 to continue to run the business after it
3 purchased these parts of Lehman.
4 A. Yes.
5 Q. And then what did you mean by you
6 provided information about what liability has
7 to offset positions?
8 A. The assets that are transferred
9 are not of static value. That's particularly
10 true -- so as I described how my positions
11 were marked on a daily basis, every asset on
12 this sheet and every liability on this sheet
13 changes every day and virtually every hour of
14 every trading day. So this is not -- this is
15 a snapshot of a fluid book of business.
16 Q. So what did you mean by
17 liabilities have to offset positions?
18 MR. STERN: Objection to the form.
19 A. Asset values change up or down.
20 Liabilities related to those assets change up
21 or down.
22 Q. What generally are the types of
23 liabilities that were associated with assets
24 that would be reflected on Exhibit 19?
25 A. They're listed here as -- I

Page 62

1 J. SEERY - HIGHLY CONFIDENTIAL
2 believe these are set forth as short positions
3 for these collateralized short-term funding as
4 well as derivatives, equities, governments.
5 **Q. What are short positions?**
6 A. A short is a position where you
7 sell an asset without actually owning it. And
8 you borrow the asset in order to complete your
9 short trade but you owe that asset in the
10 future.
11 **Q. Any further information that you**
12 **provided related to liabilities offsetting**
13 **positions?**
14 A. I certainly discussed some of the
15 positions regarding the liabilities. I don't
16 know if I directly contributed to the number
17 that's on the sheet.
18 **Q. What did you discuss related to**
19 **positions related to liabilities?**
20 A. I was involved in some discussions
21 regarding the cure payment which is listed at
22 the bottom of the liabilities.
23 **Q. Whom did you discuss cure payment**
24 **with?**
25 A. I don't recall directly.

Page 64

1 J. SEERY - HIGHLY CONFIDENTIAL
2 to cure any shortfalls in order to assign
3 those contracts to the buyer.
4 **Q. Did you provide information that**
5 **went into the actual number here? Meaning**
6 **there's a line here --**
7 A. Did I show specific numbers, I
8 don't recall. I don't think so. I wasn't the
9 controller or treasurer.
10 **Q. Do you know one way or another**
11 **whether the number that's reflected on**
12 **Exhibit 19 of 225 under Cure Payment is**
13 **consistent with the cure payment calculations**
14 **that Lehman came up with as part of the**
15 **process that you described?**
16 A. I believe that that is in the
17 neighborhood of the numbers that we came up
18 with.
19 **Q. And who was involved in coming up**
20 **with the numbers?**
21 A. Various people in the treasury and
22 accounting groups at Lehman.
23 **Q. And who was this information**
24 **reported to that was part of -- any part of**
25 **the negotiation team or somebody putting**

Page 63

1 J. SEERY - HIGHLY CONFIDENTIAL
2 **Q. What did you discuss related to**
3 **cure payment?**
4 A. What the cure payment is and what
5 the types of contracts that might have to be
6 cured and how we would come up with an
7 estimate of what that amount could be.
8 **Q. And what is a cure payment?**
9 A. In connection with the assignment
10 assumption of contracts under the bankruptcy
11 code the debtor is required to cure all
12 defaults under the contract before it can be
13 assigned.
14 **Q. And what did you discuss or**
15 **provide information relating to how to come up**
16 **with an estimate of what the cure payment**
17 **would be?**
18 A. We had looked at payables with
19 regard to the DIP to come up with an estimate
20 of the amount of money we would need for a DIP
21 financing. And we generally discussed what
22 portion of those might be attributable to
23 executory contracts that were necessary to run
24 the business. And how -- and how those --
25 that amount would be part of the transaction

Page 65

1 J. SEERY - HIGHLY CONFIDENTIAL
2 **together this number?**
3 A. Generally -- and I don't have the
4 specific recollection of an actual
5 conversation -- but generally to Berkenfeld,
6 Shafir and Shapiro, who were handling the
7 assembly of the information for the asset
8 purchase agreement.
9 **Q. Did you see documents that were**
10 **the results of this process?**
11 A. Of which process?
12 **Q. Of trying to estimate the cure**
13 **payment.**
14 A. I don't recall if it was in
15 connection with the cure payment or the DIP
16 but I certainly saw documents that shows
17 Lehman's payables.
18 **Q. Did you see the documents that**
19 **went into the estimate that eventually I**
20 **suppose arrived at the 225 cure payment's that**
21 **here?**
22 A. I don't recall specifically the
23 documents that would have come up with that
24 number but, as I said, between the DIP and
25 this document I certainly considered and saw

Page 66	Page 67
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 documents that related to Lehman's payables.</p> <p>3 Q. Was that -- the process that you</p> <p>4 described about a possible way of estimating</p> <p>5 what the cure payments would be, did Lehman</p> <p>6 actually go through that process?</p> <p>7 A. I believe we did, yes.</p> <p>8 Q. And did anybody report the results</p> <p>9 of the process to you in particular?</p> <p>10 A. No.</p> <p>11 Q. Who did they report the results of</p> <p>12 that process to?</p> <p>13 A. I don't know specifically.</p> <p>14 Q. When you said that it's in the</p> <p>15 neighborhood of numbers that you were aware</p> <p>16 of, what was your knowledge based on of what</p> <p>17 that number was?</p> <p>18 A. The payables that I'd previously</p> <p>19 seen and an estimate of the portion of those</p> <p>20 payables that related to outstanding executory</p> <p>21 contracts.</p> <p>22 Q. Did you provide any other</p> <p>23 information or data that went into any</p> <p>24 specific numbers that are listed on</p> <p>25 Exhibit 19?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. What is your understanding of what</p> <p>4 numbers are reflected here on -- as the</p> <p>5 numbers next to assets on this column?</p> <p>6 A. The snapshot mark value of those</p> <p>7 assets and the snapshot mark liability of the</p> <p>8 value of the liabilities.</p> <p>9 Q. Did you ever discuss with anyone</p> <p>10 what those numbers referred to?</p> <p>11 MR. STERN: Objection to the form.</p> <p>12 A. I don't really understand the</p> <p>13 question. If you're asking me do I have an</p> <p>14 idea what those numbers refer to, the answer</p> <p>15 is yes.</p> <p>16 Q. Let's start with did you discuss</p> <p>17 with anyone what the numbers refer to. First</p> <p>18 did you have an understanding perhaps --</p> <p>19 A. I wouldn't need to discuss it so I</p> <p>20 don't recall discussing -- when someone puts</p> <p>21 government and agency 40 billion next to it</p> <p>22 someone doesn't have to tell me that the 40</p> <p>23 billion relates to government and agency</p> <p>24 because I can read it.</p> <p>25 Q. And so what is your understanding</p>
Page 68	Page 69
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 of what the numbers refer to?</p> <p>3 A. I think I gave that already.</p> <p>4 Q. And that's the snapshot of the</p> <p>5 mark value of those assets?</p> <p>6 A. Yes.</p> <p>7 Q. Is it your -- was it your</p> <p>8 understanding at the time that the numbers</p> <p>9 listed on Exhibit 19 related to the mark value</p> <p>10 of the assets that Lehman was making for those</p> <p>11 assets?</p> <p>12 A. Can you say that again?</p> <p>13 Q. Sure. Maybe you could describe</p> <p>14 what you mean by mark value of those assets.</p> <p>15 A. I previously described how the</p> <p>16 loan book was marked. I'm now shown a sheet</p> <p>17 that shows assets and liabilities with a value</p> <p>18 next to them. I believe all of Lehman's books</p> <p>19 were marked in a similar fashion. And those</p> <p>20 value would reflect -- those values that are</p> <p>21 listed on this sheet would reflect the marks</p> <p>22 related to those assets and liabilities as</p> <p>23 kept on Lehman's balance sheet at the time</p> <p>24 this snapshot was taken.</p> <p>25 Q. And do you know one way or another</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 whether the number that's the total under</p> <p>3 assets is accurate as far as a snapshot of the</p> <p>4 mark value of those assets at the time?</p> <p>5 MR. STERN: Objection to the form.</p> <p>6 A. I don't know -- I don't know if it</p> <p>7 is or not.</p> <p>8 Q. Are any of the positions that you</p> <p>9 dealt with in the loan group, any of those</p> <p>10 values reflected on this document?</p> <p>11 A. No.</p> <p>12 Q. Do you know how any of the</p> <p>13 particular numbers were arrived at on the</p> <p>14 asset valuation for any of these particular</p> <p>15 categories?</p> <p>16 A. No.</p> <p>17 Q. Do you know the process that was</p> <p>18 being used to gather information about the</p> <p>19 value of these positions that are reflected on</p> <p>20 Exhibit 19?</p> <p>21 A. No.</p> <p>22 Q. And did you discuss with anybody</p> <p>23 the accuracy of any of the values that are</p> <p>24 reported here under assets, liabilities,</p> <p>25 putting aside cure which we've already</p>

Page 70	Page 71
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 discussed.</p> <p>3 A. Generally, yes.</p> <p>4 Q. What did you discuss? Or let's</p> <p>5 start with who did you discuss that question</p> <p>6 with?</p> <p>7 A. Berkenfeld, Shafir, Shapiro. At a</p> <p>8 subsequent time, Kirk.</p> <p>9 Q. Okay. And what did you discuss</p> <p>10 with Berkenfeld, Shafir, and Shapiro regarding</p> <p>11 the values that were attributed on Exhibit 19?</p> <p>12 A. That this was a high-level</p> <p>13 snapshot; that the values were constantly</p> <p>14 moving; that the market was incredibly</p> <p>15 volatile and that these snapshots might not be</p> <p>16 the same if taken at a later time.</p> <p>17 Q. Who said those things?</p> <p>18 A. I certainly did.</p> <p>19 Q. Was there anything else further</p> <p>20 that Mr. Berkenfeld, Shafir, or Shapiro said</p> <p>21 on those topics?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Anything else that was discussed</p> <p>24 about the values that are on Exhibit 19?</p> <p>25 A. Not that I recall.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Going back to Exhibit 1 which was</p> <p>3 the asset purchase agreement, could you turn</p> <p>4 to page 6.</p> <p>5 A. (Witness complies.)</p> <p>6 Q. And you'll see there's a</p> <p>7 definition of purchased assets.</p> <p>8 A. Um-hum.</p> <p>9 Q. And let's start with subsection</p> <p>10 (d) which is government securities, commercial</p> <p>11 paper, corporate debt, corporate equity,</p> <p>12 exchange traded derivatives and collateralized</p> <p>13 short-term agreements with a book value as of</p> <p>14 the date hereof of approximately \$70 billion</p> <p>15 collectively long positions.</p> <p>16 First of all, were you involved at</p> <p>17 all in coming up with the number 70 billion</p> <p>18 that's listed here?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. No.</p> <p>21 Q. Do you know what it reflects?</p> <p>22 MR. STERN: Objection to the form.</p> <p>23 A. I know what it says. I don't know</p> <p>24 what it reflects.</p> <p>25 Q. Do you know if it's related at all</p>
Page 72	Page 73
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 to the numbers that are related on Exhibit 19?</p> <p>3 MR. STERN: Objection to the form.</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know one way or the other</p> <p>6 whether the \$70 billion number here is</p> <p>7 accurate regarding the book value of the</p> <p>8 assets being described here?</p> <p>9 A. I don't know.</p> <p>10 Q. Then you see under (e), 50 percent</p> <p>11 of each position in the residential real</p> <p>12 estate mortgage securities. Were you involved</p> <p>13 at all in any discussions coming up to the APA</p> <p>14 regarding residential real estate mortgage</p> <p>15 securities?</p> <p>16 A. No.</p> <p>17 Q. Were you involved in any</p> <p>18 negotiations that led to that subsection of</p> <p>19 this document?</p> <p>20 A. You mean (e) in the hole?</p> <p>21 Q. (e), the residential real estate</p> <p>22 mortgage securities.</p> <p>23 A. No.</p> <p>24 Q. Okay. Then why don't you turn to</p> <p>25 page 12 and it's the continuation of the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 section regarding assumption of liabilities.</p> <p>3 And in particular subsection (i) that's on 12</p> <p>4 regarding all short positions and repos</p> <p>5 relating to any securities or interests of the</p> <p>6 types included in the definition of long</p> <p>7 positions with a book value as of the date</p> <p>8 hereof of approximately \$69 billion...and it</p> <p>9 goes on.</p> <p>10 Did you contribute at all to let's</p> <p>11 start with the drafting of this?</p> <p>12 A. No.</p> <p>13 Q. Did you contribute to the</p> <p>14 calculation that came up with the \$69 billion?</p> <p>15 A. No.</p> <p>16 Q. Do you know one way or the other</p> <p>17 whether that's accurate as describing the book</p> <p>18 value of the positions described here?</p> <p>19 A. I don't know.</p> <p>20 Q. Were you involved in drafting any</p> <p>21 part of the asset purchase agreement?</p> <p>22 A. No.</p> <p>23 Let me just clarify on that last</p> <p>24 question. I don't recall. I don't think so.</p> <p>25 I don't recall.</p>

Page 74

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. Do you know if you read it before
3 it was executed?
4 A. I'm quite sure I read parts of it.
5 I don't recall which parts. I certainly was
6 around when it was getting negotiated but I
7 did not sit at the table and wordsmith this
8 document.
9 Q. Were you involved in any
10 negotiations over the price that Barclays was
11 paying that was reflected in the asset
12 purchase agreement?
13 A. No.
14 Q. Did you have any discussions with
15 anyone about that, the price that Barclays
16 should pay?
17 A. The price that Barclays should
18 pay.
19 Not that I recall.
20 Q. Okay. After the asset purchase
21 agreement was signed tell me about the next
22 activities that you were engaged in related in
23 any way to the transaction with Barclays.
24 A. Similar to the previous
25 discussion. That is keeping the business

Page 76

1 J. SEERY - HIGHLY CONFIDENTIAL
2 A. I did a variety of different
3 things, including trying to make sure that we
4 stayed open for business, that employees
5 didn't leave, that transactions were --
6 outstanding transactions were closed, that we
7 had funding to continue to operate, that we
8 continued to fund our positions. Those types
9 of activities.
10 Q. Leaving off -- now let's talk
11 between the signing of the APA and the court
12 hearing. Were you involved --
13 A. Which court hearing?
14 Q. Let's do the court hearing on
15 Friday, September 19th.
16 A. Okay. I believe there were court
17 hearings during the week.
18 Q. Okay. Were you involved -- did
19 you attend the court hearing that was on the
20 17th? So that's the Wednesday.
21 A. Yes.
22 Q. And what was your role at the
23 court hearing?
24 A. I believe at the court hearing at
25 the 17th I was one of just a couple of

Page 75

1 J. SEERY - HIGHLY CONFIDENTIAL
2 together. Try to deliver that business in
3 accordance with the provisions of the asset
4 purchase agreement and assuring that we could
5 bring the transaction to court and obtain
6 approval to consummate the transaction.
7 Q. As part of keeping the business
8 together to deliver that business did Lehman
9 continue to comply with its regulatory
10 requirements of marking its books?
11 A. I don't know.
12 Q. What about for the loan book that
13 you were dealing with; did Lehman continue to
14 mark its books?
15 A. I believe we did. Understanding
16 that it was incredibly volatile and the market
17 was incredibly illiquid and these products --
18 the loan products in particular -- are
19 illiquid.
20 Q. What do you mean by illiquid?
21 A. Meaning that there is not ready
22 liquidity to transact at any size at any time.
23 Q. What did you do relating to
24 assuring that you could bring the transaction
25 to court and get approval?

Page 77

1 J. SEERY - HIGHLY CONFIDENTIAL
2 business people from Lehman there to assure
3 that I could answer any questions regarding
4 the business for our attorneys at Weil and to
5 assure that we properly presented the
6 transaction to the court.
7 Q. Why did you think it was important
8 to properly present the transaction to the
9 court?
10 A. Because that's how you get a
11 transaction -- 363 transaction approved,
12 particularly one that required significant
13 speed to get it done.
14 Q. Who else was providing information
15 to Weil or anyone who was presenting
16 information to the court about the business
17 transaction that you know of?
18 A. In the court that day or
19 generally?
20 Q. Generally. But let's start with
21 providing information that would go to the
22 court for the September 17th hearing.
23 A. All of the folks that were
24 previously mentioned with the possible
25 exception of Kirk who wasn't really around the

Page 78	Page 79
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 execution of the deal at that point.</p> <p>3 But certainly everybody else that</p> <p>4 I mentioned.</p> <p>5 Q. Who else attended from Lehman the</p> <p>6 court hearing on September 17th?</p> <p>7 A. I don't recall. I don't believe</p> <p>8 there were many senior people there. I don't</p> <p>9 remember if Bart was there -- Bart McDade was</p> <p>10 there or not.</p> <p>11 Q. So now going towards -- from the</p> <p>12 signing of the APA through the hearing on</p> <p>13 September 19th, were you involved in any</p> <p>14 negotiations with Barclays?</p> <p>15 A. Yes.</p> <p>16 Q. What were the negotiations that</p> <p>17 you were involved in?</p> <p>18 A. There was significant -- or a</p> <p>19 myriad of negotiations regarding the transfer</p> <p>20 of the business, how it would be consummated,</p> <p>21 what the assets were, the financing of</p> <p>22 Lehman's positions, the types of assets that</p> <p>23 had to be financed that would be transitioned</p> <p>24 over as part of the business.</p> <p>25 Q. Who at Barclays did you speak to</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 on those topics?</p> <p>3 A. Between, you know, the 17th and</p> <p>4 the 19th I spoke to -- that I can recall, I</p> <p>5 spoke to Keegan, LaRocco, Ricci and Mahon.</p> <p>6 Q. Could you spell that last one?</p> <p>7 A. M-A-H-O-N.</p> <p>8 Q. What did you speak with Keegan</p> <p>9 about?</p> <p>10 A. The structure of the transaction.</p> <p>11 The assets. His concerns regarding the value</p> <p>12 of those assets.</p> <p>13 Q. Anything else?</p> <p>14 A. The business. The risk in the</p> <p>15 business. The volatility of the markets.</p> <p>16 Q. What in particular did you say</p> <p>17 related to assets and concerns regarding the</p> <p>18 value of assets when you spoke with Mr.</p> <p>19 Keegan?</p> <p>20 A. At various times Mr. Keegan was</p> <p>21 concerned that the assets may not have been</p> <p>22 marked appropriately based on the significant</p> <p>23 volatility in the market at that time. In</p> <p>24 particular the long assets were subject to</p> <p>25 significant downward pressure subsequent to</p>
Page 80	Page 81
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Lehman's filing which caused a general and</p> <p>3 greatly discussed upheaval in the credit</p> <p>4 marks.</p> <p>5 Q. What did you say on the topic?</p> <p>6 A. Generally that we were trying to</p> <p>7 mark the assets -- I'm sure that the various</p> <p>8 businesses at Lehman were trying to mark the</p> <p>9 assets constantly that they were -- the values</p> <p>10 were moving significantly, that there were</p> <p>11 transactions -- some transactions still</p> <p>12 getting done. That the pricing of the assets</p> <p>13 were subject to, you know, minute-by-minute</p> <p>14 fluctuation, and that we were trying to</p> <p>15 deliver all the assets that would be required</p> <p>16 to get the deal done.</p> <p>17 Q. Did you tell him that you thought</p> <p>18 that the marks, considering the circumstances,</p> <p>19 were as accurate as they could be with those</p> <p>20 circumstances?</p> <p>21 MR. STERN: Objection to the form.</p> <p>22 A. No. I don't recall.</p> <p>23 Q. Did you make any changes to the</p> <p>24 books after talking to Mr. Keegan about his</p> <p>25 concerns?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 MR. STERN: Objection to the form.</p> <p>3 A. I didn't have any authority to</p> <p>4 make changes to the books.</p> <p>5 Q. Do you know if anyone at Lehman</p> <p>6 made any changes to the books in response to</p> <p>7 any concern from Barclays about the value that</p> <p>8 was on those books?</p> <p>9 A. Not that I know.</p> <p>10 Q. What efforts were you aware of at</p> <p>11 Lehman in trying to mark assets given these</p> <p>12 circumstances?</p> <p>13 A. Only as I previously described.</p> <p>14 Q. Can you restate those? Now I want</p> <p>15 to know the efforts that Lehman --</p> <p>16 A. My business continued to try to</p> <p>17 mark assets to market on a daily basis. I</p> <p>18 believe that all of the other businesses tried</p> <p>19 to do the same but I don't know that they</p> <p>20 actually did it.</p> <p>21 Q. Did you discuss with anyone at</p> <p>22 Barclays including Mr. Keegan about what type</p> <p>23 of assets could be conveyed to Barclays in the</p> <p>24 transaction?</p> <p>25 MR. STERN: Objection to the form.</p>

Page 82	Page 83
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm sorry.</p> <p>3 Q. Yeah. Was any of the topics --</p> <p>4 A. Just with Barclays? Barclays</p> <p>5 people?</p> <p>6 Q. Yeah. Let's start with Barclays</p> <p>7 people.</p> <p>8 A. Okay. Barclays and Barclays</p> <p>9 Peabody. I did discuss it with Keegan.</p> <p>10 Q. Okay. And what did you discuss</p> <p>11 with Keegan regarding what assets could be</p> <p>12 conveyed as part of a transaction?</p> <p>13 A. That we would continue to try</p> <p>14 to -- between the 17th and the 19th</p> <p>15 discussions were to try to put together a</p> <p>16 relatively matched book of assets, meaning</p> <p>17 longs and shorts. And we continued to try to</p> <p>18 do that.</p> <p>19 Q. What's a matched book of assets?</p> <p>20 MR. STERN: Objection to the form.</p> <p>21 A. Actually withdraw matched book</p> <p>22 because it wasn't really matched. A matched</p> <p>23 book would be longs and shorts related to the</p> <p>24 same positions. This wasn't a matched book.</p> <p>25 This with a balanced book, if you will, for</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 lack of a letter term meaning you had</p> <p>3 offsetting short positions designed to offset</p> <p>4 the long positions that you had.</p> <p>5 Q. Did you discuss with anyone at</p> <p>6 Barclays or Lehman about whether this</p> <p>7 transaction, that there was a goal of having a</p> <p>8 balanced book?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. Not that -- no. We were trying to</p> <p>11 deliver the assets to run the business. There</p> <p>12 wasn't a requirement that it be balanced</p> <p>13 necessarily.</p> <p>14 Q. So why were you talking about</p> <p>15 having a balanced book?</p> <p>16 A. Because of the volatility in the</p> <p>17 market that the snapshot that you would take</p> <p>18 would leave you exposed if you just bought</p> <p>19 long assets.</p> <p>20 Q. Who expressed that opinion?</p> <p>21 A. I did.</p> <p>22 Q. Anyone else?</p> <p>23 A. Not that I recall.</p> <p>24 Q. And who did you tell that opinion</p> <p>25 to?</p>
Page 84	Page 85
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. Certainly I had those discussions</p> <p>3 with Keegan, Kirk, Creditors Committee. Weil.</p> <p>4 Others internal at Lehman.</p> <p>5 Q. When did you have discussions with</p> <p>6 the Creditors Committee on the topic of a</p> <p>7 balanced book?</p> <p>8 MR. STERN: Objection to the form.</p> <p>9 A. It wasn't on a balanced book. It</p> <p>10 was discussions about the risk of the assets</p> <p>11 and those discussions went from the 19th --</p> <p>12 for sure on the 19th, some on the 20th, and</p> <p>13 significant discussions on the 21st.</p> <p>14 Q. We'll return to that in a bit.</p> <p>15 A. Actually, pretty significant on</p> <p>16 the 19th, too, now that I recall. Before the</p> <p>17 hearing.</p> <p>18 Q. Did anybody from -- that you ever</p> <p>19 spoke to at Barclays express an opinion</p> <p>20 whether as part of the transaction there was a</p> <p>21 goal or intention to have a balanced book?</p> <p>22 A. No.</p> <p>23 Q. Okay. Did you have any</p> <p>24 discussions with anyone at Lehman -- and this</p> <p>25 is now between the APA and the hearing on the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 19th -- about any topic related to the</p> <p>3 valuation of positions or assets that Lehman</p> <p>4 was conveying in the transaction?</p> <p>5 A. Generally, we discussed the</p> <p>6 volatility in the market and the impact that</p> <p>7 volatility would have on the positions that we</p> <p>8 held that were being funded at first by the</p> <p>9 Fed and then by Barclays and that were going</p> <p>10 to be part of the transaction with Barclays.</p> <p>11 Q. First, tell me what you mean by</p> <p>12 there were positions that were held by the Fed</p> <p>13 that were going to be part of the transaction</p> <p>14 with Barclays.</p> <p>15 A. We previously discussed and you</p> <p>16 had asked me about repo transactions and the</p> <p>17 Fed being involved in a repo transaction with</p> <p>18 Lehman Brothers.</p> <p>19 Q. And what's your understanding of</p> <p>20 what happened with the assets that were</p> <p>21 pledged to the Fed? What happened with those?</p> <p>22 A. Again, you have to understand that</p> <p>23 the book is a very fluid book. It's not a</p> <p>24 fixed set of assets. So what's repoed on</p> <p>25 Monday might not be the same assets and</p>

Page 86

1 J. SEERY - HIGHLY CONFIDENTIAL
2 unlikely to be the same assets that are repoed
3 on Tuesday.

4 The Fed carried that repo from
5 sometime prior -- from the prior week in
6 through the beginning of the week, and as I
7 previously testified had made very clear to us
8 that it wanted out of its financing position.
9 And the risk of a party that wants out is if
10 you can't take them out they can foreclose you
11 out.

12 Barclays agreed to step into the
13 funding of the positions that otherwise would
14 have gone to the Fed. The positions, as I
15 said, though, were very fluid.

16 Q. Okay. So what happened to the
17 positions that were part of the Fed
18 transaction once Barclays stepped into the
19 shoes of the Fed?

20 MR. STERN: Objection to the form.

21 A. Again, it's categories of
22 positions. It's not the actual positions.
23 Some may be the same. Some may not. And I
24 think I just said that Barclays agreed to step
25 up and fund what otherwise would have been

Page 88

1 J. SEERY - HIGHLY CONFIDENTIAL
2 asset that I believe was not in the Fed repo
3 but was in the clearing box that JPMorgan
4 sought to put to Barclays as part of a repo
5 transaction, not necessarily the Fed repo
6 transaction. And I was asked about those
7 assets.

8 Q. Who asked you?

9 A. John Mahon.

10 Q. Is that the one I had you spell
11 before?

12 A. Yes. I think we normally say
13 Mahon or Mahon. But he likes Mahon.

14 Q. And when did you speak with Mr.
15 Mahon on that topic of the Racers?

16 A. I don't recall if it was Wednesday
17 night or Thursday night.

18 Q. And what did you say on the topic
19 of the Racers?

20 A. That I didn't believe that was an
21 appropriate security that would have been put
22 into the Fed and I didn't believe that it
23 actually had been. But I didn't really know.

24 Q. And why did you think that it
25 wasn't an appropriate security?

Page 87

1 J. SEERY - HIGHLY CONFIDENTIAL
2 funded by the Fed.

3 Q. What was your role in that
4 transition from the -- of Barclays stepping
5 into the shoes of the Fed?

6 A. I didn't really have one. That
7 was done by treasury. Meaning Lehman's
8 treasury.

9 Q. Were you involved at all in
10 valuing any of the assets that were -- let's
11 start with the assets that were a part of the
12 Fed transaction.

13 A. No.

14 Q. Were you involved in ever valuing
15 any of the assets that went over to Barclays
16 as part of Barclays stepping into the shoes of
17 the Fed?

18 A. I was involved in certain of the
19 assets that Barclays was considering funding
20 in relation to the repo transaction. I didn't
21 provide valuations but I gave general view of
22 some of the assets.

23 Q. Okay. What assets were those?

24 A. Specifically there was a Racers --
25 what we called the Racers trust which was an

Page 89

1 J. SEERY - HIGHLY CONFIDENTIAL

2 A. It initially had been rated a lot
3 higher. But a lot of the assets that were in
4 that trust had degraded over time.

5 Q. How did you know that?

6 A. I recognized the assets.

7 Q. What kind of assets were they?

8 A. They were various type of loan or
9 bond type assets.

10 Q. What did Mr. Mahon say on the
11 topic?

12 A. I don't recall.

13 Q. How did you learn that JPMC was
14 seeking to put them into some sort of repo
15 transaction with Barclays?

16 A. JPMorgan?

17 Q. Yes.

18 A. Okay. And repeat the question
19 again.

20 Q. Yeah. How did you learn that
21 JPMorgan was seeking to put Racers Trust as
22 part of a repo transaction with Barclays?

23 A. Mahon called me and asked -- and I
24 believe he was in London. And asked me about
25 various assets, most of which were either --

Page 90	Page 91
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 that were not easily identifiable to see</p> <p>3 whether I knew what they were and whether they</p> <p>4 were regular, if you will, repo tran --</p> <p>5 assets.</p> <p>6 Q. What happened with the Racers?</p> <p>7 A. I believe it stayed in the</p> <p>8 JPMorgan clearing box where it started.</p> <p>9 Q. What's a clearing box?</p> <p>10 A. There's a complicated arrangement</p> <p>11 that governs how securities firms often</p> <p>12 finance themselves and clear trades. That is</p> <p>13 a -- relates to a clearing bank that acts on</p> <p>14 behalf of the firm to settle trades and then</p> <p>15 finance the positions on a nightly basis with</p> <p>16 the Street. The clearing box is a term used</p> <p>17 to describe the place where your assets are</p> <p>18 held either when they're not in repo</p> <p>19 overnight, or if they're not -- that's fine.</p> <p>20 Where they're not subject to a repo.</p> <p>21 Q. Did you discuss any other</p> <p>22 categories of assets with Mr. Mahon?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you ever discuss residential</p> <p>25 mortgage-backed securities with anybody</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 related --</p> <p>3 A. Not that I recall.</p> <p>4 Q. Or RESIs?</p> <p>5 A. I know what residential</p> <p>6 mortgage-backed securities are but I don't</p> <p>7 recall having that discussion.</p> <p>8 Q. Okay. Anything else -- or</p> <p>9 conversations that you had with anybody</p> <p>10 regarding the assets that were ultimately</p> <p>11 transferred to Barclays when Barclays took</p> <p>12 over for the Fed?</p> <p>13 MR. STERN: Can I hear the</p> <p>14 question back, Francis.</p> <p>15 (Record read.)</p> <p>16 MR. STERN: Objection to the form.</p> <p>17 A. When?</p> <p>18 Q. Let's go from the signing of the</p> <p>19 APA until the court hearing.</p> <p>20 A. I had various discussions</p> <p>21 regarding the assets that were funded by</p> <p>22 Barclays with numerous people including the</p> <p>23 Barclays folks which would be Keegan and</p> <p>24 LaRocco. Some other discussions with Mahon.</p> <p>25 Numerous discussions with Lehman personnel</p>
Page 92	Page 93
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 which would include all the previously</p> <p>3 mentioned, and by this time for certain Kirk.</p> <p>4 Numerous discussions with Weil Gotshal.</p> <p>5 Numerous discussions with Creditor Committee</p> <p>6 representatives including representatives from</p> <p>7 Houlihan Lokey and Milbank Tweed.</p> <p>8 Q. What were the topics that you</p> <p>9 discussed with those people regarding the</p> <p>10 assets that were funded by Barclays?</p> <p>11 A. That assets -- generally that</p> <p>12 assets were in -- being funded in a repo</p> <p>13 format. That those assets were part of the</p> <p>14 business. That the values were volatile. The</p> <p>15 market was volatile and the values were</p> <p>16 shifting. That the repo would be used as part</p> <p>17 of the transaction to close the trade with</p> <p>18 Barclays.</p> <p>19 Q. When did you learn that the repo</p> <p>20 was going to be used as part of the</p> <p>21 transaction to close the trade with Barclays?</p> <p>22 A. I don't recall specifically.</p> <p>23 Q. Do you know who told you or how</p> <p>24 you learned?</p> <p>25 A. I don't recall.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And what do you mean that the repo</p> <p>3 was going to be used as part of the</p> <p>4 transaction to close the trade?</p> <p>5 MR. STERN: Objection to the form.</p> <p>6 A. The repo -- the assets that were</p> <p>7 going to be transferred with the business,</p> <p>8 meaning the positions that were going to be</p> <p>9 transferred with the business, were financed</p> <p>10 through a repo structure. And that in order</p> <p>11 to transfer those assets to Barclays as part</p> <p>12 of the business, one had to either refinance</p> <p>13 the repo with another party or get Barclays to</p> <p>14 finance the repo. Barclays financed the repo</p> <p>15 that week.</p> <p>16 Q. Did you have any discussions on</p> <p>17 which assets in particular could be</p> <p>18 transferred from what was part of the Fed</p> <p>19 transaction to the Barclays transaction?</p> <p>20 A. Other than the previously</p> <p>21 described Racers I don't recall specific</p> <p>22 transact -- discussions.</p> <p>23 Q. Okay. And as part of these</p> <p>24 discussions with these folks, did you also</p> <p>25 have discussions about what was the</p>

Page 94	Page 95
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 appropriate way to value the assets that were</p> <p>3 going to be transferred to Barclays?</p> <p>4 A. Other than the market marked</p> <p>5 values and the discussion regarding Racers,</p> <p>6 not that I recall.</p> <p>7 Q. And what did you have a discussion</p> <p>8 about the market marked values?</p> <p>9 A. That the asset values were fluid</p> <p>10 and they would have to be continually marked.</p> <p>11 Q. Were you part of the process at</p> <p>12 all in continuing to mark the values of those</p> <p>13 assets?</p> <p>14 A. No.</p> <p>15 Q. Do you know if those asset values</p> <p>16 were continuing to be marked?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you have any discussions with</p> <p>19 JPMorgan about any issues related to the repo</p> <p>20 transaction?</p> <p>21 A. I was involved in two sets of</p> <p>22 discussions with JPMorgan. One was a</p> <p>23 conversation over the phone in Paolo Tonucci's</p> <p>24 office with Pauly, Steve Berkenfeld, me, and</p> <p>25 there were probably ten other people in the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 office where the representative from JPMorgan</p> <p>3 along with some senior folks from JPMorgan</p> <p>4 were demanding more collateral. And I don't</p> <p>5 recall if this was -- when this was that week.</p> <p>6 And we told them they had plenty of collateral</p> <p>7 and they had to clear our trades. They didn't</p> <p>8 have the ability to shut us down.</p> <p>9 Q. Why did they say they were</p> <p>10 demanding more collateral?</p> <p>11 A. They felt uncomfortable.</p> <p>12 Q. And what was Lehman's response to</p> <p>13 that?</p> <p>14 A. You have plenty of collateral.</p> <p>15 You're well over-collateralized.</p> <p>16 Q. And what did JPMorgan do?</p> <p>17 A. I think they agreed to disagree</p> <p>18 and told us they felt bad.</p> <p>19 Q. Now, how was that related, if at</p> <p>20 all, with the repo transactions with Barclays?</p> <p>21 MR. STERN: Objection to the form.</p> <p>22 A. I don't recall that it was. And</p> <p>23 then the second set of discussions where I</p> <p>24 didn't really say much if anything, I don't</p> <p>25 think I said anything, was at Weil Gotshal on</p>
Page 96	Page 97
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Sunday, the 21st, which related to separate</p> <p>3 repo issues and Barclays -- and JP clearing</p> <p>4 trades as that week started and we were trying</p> <p>5 to close the transaction.</p> <p>6 Q. Did there ever -- I'll come back</p> <p>7 to Sunday 21st transaction that talked about</p> <p>8 with JPMC. But before I get there were you</p> <p>9 involved at all in a process to try to find</p> <p>10 unencumbered assets or additional collateral</p> <p>11 to give to Barclays?</p> <p>12 A. I was aware of it. I wasn't</p> <p>13 running around looking for assets.</p> <p>14 Q. What was your knowledge about that</p> <p>15 process?</p> <p>16 A. As the -- as we were coming</p> <p>17 towards the hearing on the 19th, the market</p> <p>18 volatility was creating significant concern on</p> <p>19 Barclays' part that the marks might not be</p> <p>20 accurate because of that volatility and</p> <p>21 downward pressure on prices; that the size of</p> <p>22 the transaction had to be considered with</p> <p>23 respect to the value being ascribed to those</p> <p>24 assets; and that without sufficient protection</p> <p>25 in the liabilities as well as -- from the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 liabilities, as well as the movement in the</p> <p>3 value that Barclays would be at significant</p> <p>4 risk of loss with respect to those positions.</p> <p>5 So they were demanding that more</p> <p>6 collateral be posted to give them more</p> <p>7 protection from market fluctuations.</p> <p>8 Q. Whom did you discuss that topic</p> <p>9 with?</p> <p>10 A. Kirk, Lowitt, Tonucci, Keegan.</p> <p>11 Q. When did you --</p> <p>12 A. Ricci. Those are the general</p> <p>13 people around the discussions.</p> <p>14 MR. STERN: Excuse me. I don't...</p> <p>15 Q. Was this in one meeting or a</p> <p>16 series of discussions?</p> <p>17 A. Series of discussions.</p> <p>18 Q. Who at Barclays did you in</p> <p>19 particular talk to on the topic of their</p> <p>20 desire for additional assets?</p> <p>21 A. Keegan. The others I left off</p> <p>22 were -- I had a lengthy discussion with the</p> <p>23 Committee about this action. When I say the</p> <p>24 Committee the people at the committee that I</p> <p>25 spoke to were the Houlihan representatives as</p>

Page 98	Page 99
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 well as the Milbank Tweed representatives.</p> <p>3 Q. Okay. Let's start with your</p> <p>4 discussions with Keegan. What specifically</p> <p>5 did Keegan say on the subject of additional</p> <p>6 assets that might be needed to be included as</p> <p>7 part of the transaction?</p> <p>8 A. I don't recall specifically. Mike</p> <p>9 just generally expressed significant concern</p> <p>10 regarding the value of the assets and the risk</p> <p>11 of holding those assets in the size that they</p> <p>12 were in in a very volatile market.</p> <p>13 Q. Was this a discussion just between</p> <p>14 you and Mr. Keegan or other people as well?</p> <p>15 A. There were numerous people</p> <p>16 involved. I don't recall the specific meeting</p> <p>17 or discussion.</p> <p>18 Q. Did you in particular say</p> <p>19 something to Mr. Keegan on that topic?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. Do you remember anyone from</p> <p>22 Lehman responding to Mr. Keegan's concern</p> <p>23 about the value of the asset and the risk</p> <p>24 holding those assets and the size?</p> <p>25 A. Generally, I and others objected</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 to his concern and tried to aussage that</p> <p>3 concern and tell him what's \$45 billion among</p> <p>4 friends. There's really not -- he shouldn't</p> <p>5 be that concerned and these were valuable</p> <p>6 assets that were appropriately marked. So we</p> <p>7 negotiated with him.</p> <p>8 Q. Do you remember anything a</p> <p>9 specific person at Lehman said on that topic?</p> <p>10 A. No. Not the specific statements.</p> <p>11 Q. Do you remember any more about in</p> <p>12 what way Lehman objected to that concern?</p> <p>13 A. There were significant discussions</p> <p>14 about Barclays' concern and that we didn't</p> <p>15 like the fact that they were raising it. We</p> <p>16 didn't have other encumbered assets. Other</p> <p>17 unencumbered assets. That we thought that the</p> <p>18 values were fine and that they were protected</p> <p>19 by the quality of the assets, the value that</p> <p>20 they put up against them as well as the short</p> <p>21 positions.</p> <p>22 Q. What do you mean by the quality of</p> <p>23 the assets?</p> <p>24 A. That these were not -- these were</p> <p>25 assets that could be identified and priced.</p>
Page 100	Page 101
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What do you mean by the -- they</p> <p>3 were protected by -- I think you said the</p> <p>4 quality of the assets and the value. What did</p> <p>5 you mean by that?</p> <p>6 A. The quality -- what did I say</p> <p>7 exactly?</p> <p>8 MR. STERN: The quality of the</p> <p>9 assets, the value that they put up</p> <p>10 against them as well, as the short</p> <p>11 position.</p> <p>12 Q. Ah. What did you mean by the</p> <p>13 value they put up against them?</p> <p>14 A. The amount of money that they had</p> <p>15 put against the assets.</p> <p>16 Q. Amount who had put up?</p> <p>17 A. Barclays.</p> <p>18 Q. How -- I'm sorry. But how does</p> <p>19 that -- how does the amount of money that</p> <p>20 Barclay put up address their concern about the</p> <p>21 value of the assets?</p> <p>22 A. How would -- they had --</p> <p>23 MR. STERN: Objection to the form.</p> <p>24 A. You previously asked me about a</p> <p>25 haircut so they got that.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Describe to me what you mean by</p> <p>3 they were protected because of a haircut that</p> <p>4 they had previously put up and that they got.</p> <p>5 A. Same description I gave you before</p> <p>6 of a haircut. They put up less than the</p> <p>7 marked value of the assets.</p> <p>8 Q. So you're referring to earlier</p> <p>9 when we were discussing a haircut there was an</p> <p>10 amount of collateral that the value of which</p> <p>11 is supposed to be higher than the price given</p> <p>12 in some sort of financing, right?</p> <p>13 A. That's correct.</p> <p>14 Q. And in what way was there a</p> <p>15 haircut that was related to the transaction</p> <p>16 with Barclays?</p> <p>17 A. In what way was there -- there was</p> <p>18 a haircut on the repo.</p> <p>19 Q. Meaning that the repo transaction</p> <p>20 that Barclays was stepping into the shoes of</p> <p>21 had a haircut where there was -- the value of</p> <p>22 the collateral that was part of the repo</p> <p>23 transaction was more than the money that was</p> <p>24 given?</p> <p>25 A. Yes.</p>

Page 102	Page 103
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know how much more?</p> <p>3 A. No, I don't recall.</p> <p>4 Q. And did Barclays end up keeping</p> <p>5 that haircut?</p> <p>6 MR. STERN: Objection to the form.</p> <p>7 A. I don't understand the question.</p> <p>8 Q. Okay. Maybe I don't understand</p> <p>9 what you said. I think that when you said one</p> <p>10 of the reasons -- one of the responses to</p> <p>11 the -- to the concern about the value of the</p> <p>12 assets was that the value that had been put up</p> <p>13 against the amount which included the haircut,</p> <p>14 and I think you said which Barclays got, what</p> <p>15 did you mean by that?</p> <p>16 A. I don't think I said that Barclays</p> <p>17 got. I think I said Mike expressed concern</p> <p>18 about the value of the assets they were</p> <p>19 holding an ability to close the transaction</p> <p>20 the way it was currently structured with the</p> <p>21 volatility in the market. One of the factors</p> <p>22 that would mitigate his concern would be the</p> <p>23 haircut.</p> <p>24 So between the amount they put up</p> <p>25 versus the assets, what we described as the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 quality of the assets, the other value in the</p> <p>3 transaction we argued that they were</p> <p>4 sufficiently protected. They wouldn't suffer</p> <p>5 significant risk and loss.</p> <p>6 Q. Now, in a normal repo transaction</p> <p>7 does the person who's doing the financing</p> <p>8 usually keep the haircut -- keep the excess</p> <p>9 collateral once the money has been repaid?</p> <p>10 A. The -- I think you're jumping</p> <p>11 ahead too many steps.</p> <p>12 Q. Okay.</p> <p>13 A. So in a repo transaction I</p> <p>14 described how the first party sells to the</p> <p>15 second party and the second party agrees to</p> <p>16 sell it back. And that there's a difference</p> <p>17 between the amount -- the value of the assets</p> <p>18 that are sold versus the amount -- the</p> <p>19 purchase price. And then when they sell it</p> <p>20 back they repay the amount.</p> <p>21 But it's a higher amount. Which</p> <p>22 includes an embedded charge.</p> <p>23 Q. So you refer to the embedded</p> <p>24 charge as a margin?</p> <p>25 A. That would be their margin.</p>
Page 104	Page 105
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And the amount -- how does the</p> <p>3 margin compare to the haircut?</p> <p>4 A. There can be, you know, enumerable</p> <p>5 ways to compare the margin to the haircut.</p> <p>6 Q. Is it often that the haircut is in</p> <p>7 the excess collateral that is given as part of</p> <p>8 the repo is even more than the margin that</p> <p>9 will be -- covers even more than the margin</p> <p>10 amount?</p> <p>11 A. The party entering into the repo,</p> <p>12 the buyer of the assets, should structure the</p> <p>13 repo so that it has more collateral or more</p> <p>14 assets than the amount that it pays over plus</p> <p>15 the margin.</p> <p>16 Q. And after the party who took the</p> <p>17 money and sold the assets pays back the money</p> <p>18 plus a margin, do they usually get back the</p> <p>19 excess amount of collateral and assets?</p> <p>20 A. They buy all the assets back.</p> <p>21 Q. In this transaction which Barclays</p> <p>22 took over, did Barclays keep all of the</p> <p>23 collateral that was pledged --</p> <p>24 A. The repo transaction is different</p> <p>25 than how the trans -- the APA closed.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. How is it different?</p> <p>3 A. One's a financing transaction.</p> <p>4 The other is a sale.</p> <p>5 MR. STERN: Erica, are you asking</p> <p>6 Mr. Seery what happens in a default?</p> <p>7 What happens to the excess collateral in</p> <p>8 a default scenario?</p> <p>9 MS. TAGGART: Well, perhaps my</p> <p>10 questions aren't clear.</p> <p>11 Q. Well, I guess I can ask that. So</p> <p>12 what happens in a default scenario? So when a</p> <p>13 person -- the party who takes the money can't</p> <p>14 pay back the money to buy back the assets.</p> <p>15 A. Because it's structured as a</p> <p>16 repo -- and again I'm not a repo expert and,</p> <p>17 as I said earlier, there are enumerable</p> <p>18 different kinds of repos -- but the general</p> <p>19 structure is that if the party that sold the</p> <p>20 assets is unable to buy the assets back, that</p> <p>21 the first party keeps the assets.</p> <p>22 Q. Have you seen that happen before?</p> <p>23 A. Have I seen repurchase agreements</p> <p>24 get closed out. Yes.</p> <p>25 Q. Have you ever seen a time when</p>

Page 106

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **there was a default and the party that**
3 **purchased the assets kept all the assets?**
4 A. I don't recall. I believe so,
5 yes.
6 Q. Can you name any situations now
7 that happened like that?
8 A. There's numerous bankruptcy cases
9 that involve repos and financial institutions
10 starting from Bevel Bressler on. So that I've
11 seen -- I haven't been involved in one but
12 I've seen numerous cases.
13 Usually there is a shortfall which
14 is why there's a case. And that is because
15 the assets turn out not to be sufficient
16 because of the volatility or because of the
17 price of the assets or some other reason.
18 Q. Have you ever seen an example
19 where the assets more than covered the price
20 plus the margin but the party that gave the
21 money to buy the assets kept all the assets?
22 MR. STERN: Objection to the form.
23 A. That's the structure of the trade.
24 I don't know if I've seen it.
25 MS. TAGGART: Let's take a break.

Page 108

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **liabilities.**
3 MR. STERN: Objection to the form.
4 A. The assets matched the liabilities
5 in this schedule, correct.
6 Q. And was it your understanding that
7 the deal that was agreed to in the asset
8 purchase agreement had the structure where you
9 would have offsetting liabilities and assets?
10 MR. STERN: Objection to the form.
11 A. The -- I think on this -- on the
12 16th this structure was the structure that
13 we're trying to get to, yes.
14 Q. And --
15 A. But, again, this is a snapshot.
16 So these assets and liabilities set forth on
17 this sheet diverge or can diverge.
18 Q. Was your understanding of the deal
19 as of the 16th that -- did you have an
20 understanding whether Barclays was supposed to
21 make a profit out of the deal?
22 MR. STERN: Objection to the form.
23 A. Did I understand that Barc --
24 Barclays was clearly supposed to make a profit
25 out of the deal or they wouldn't do it.

Page 107

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 MR. STERN: Okay.
3 (Recess taken.)
4 BY MS. TAGGART:
5 Q. I wanted to return to a comment
6 that I think you made when we were talking
7 about Exhibit 19 and that was the schedule of
8 assets and liabilities that were related to
9 the initial asset purchase agreement. And I
10 think that you had said that some of the
11 information that you provided was how you have
12 to have offsetting liabilities and assets.
13 Do you remember what information
14 you provided on that topic?
15 A. I think I said general discussion
16 around that being the structure. You don't
17 have to have anything.
18 Q. And what was your understanding of
19 the structure regarding the offsetting
20 liability and assets?
21 A. That there was both longs and
22 shorts in this book.
23 Q. And was it your understanding
24 that -- well, first of all, you noticed that
25 on the actual schedule the assets matched the

Page 109

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 Q. What do you mean by that?
3 A. People don't do deals that are not
4 profitable.
5 Q. And in what way did you believe
6 that Barclays was making a profit?
7 MR. STERN: Objection to the form.
8 A. I believe they were buying one of
9 the best fixed income franchises on Wall
10 Street for a very good price.
11 Q. What do you mean by very good
12 price?
13 MR. STERN: Objection to the form.
14 A. I mean that the franchise was
15 worth a lot of money and they were not going
16 to have to pay what it was fully worth because
17 there was no funding to keep the franchise
18 going.
19 Q. What was your understanding of the
20 price that Barclays was agreeing to pay?
21 A. They were going to pay -- buy
22 assets, have liabilities, take the risk on
23 those assets and liabilities, and pay a
24 billion dollars for the building. Pay another
25 couple hundred million for the data centers.

Page 110	Page 111
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 And pay a couple -- 250 for the franchise.</p> <p>3 Q. Was it your understanding that</p> <p>4 Barclays would have gain on acquisition of --</p> <p>5 where its assets and value that it received</p> <p>6 was more than the liabilities and value that</p> <p>7 it gave?</p> <p>8 MR. STERN: Objection to the form.</p> <p>9 A. I don't understand your question.</p> <p>10 Q. Was it your understanding that</p> <p>11 Barclays -- there was an intention that</p> <p>12 Barclays would have a gain upon acquisition at</p> <p>13 the end of this transaction?</p> <p>14 MR. STERN: Objection to the form.</p> <p>15 A. It was my understanding that</p> <p>16 Barclays was hoping if they could hold the</p> <p>17 franchise together, keep the employees and the</p> <p>18 customer relationships, to have a significant</p> <p>19 gain and that with respect to the assets,</p> <p>20 meaning the positions that were going to be in</p> <p>21 that book long and short, they owned the risk.</p> <p>22 So there could be a gain or there could be a</p> <p>23 loss.</p> <p>24 MR. CARDEN: It's not responsive.</p> <p>25 Move to strike.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: It's a deposition.</p> <p>3 MS. TAGGART: Could you read back</p> <p>4 my question.</p> <p>5 (Record read.)</p> <p>6 BY MS. TAGGART:</p> <p>7 Q. So focusing on the moment that the</p> <p>8 transaction closes, was it your understanding</p> <p>9 that at that moment it was the intention that</p> <p>10 Barclays would have a gain?</p> <p>11 MR. STERN: Objection. Asked and</p> <p>12 answered.</p> <p>13 A. I didn't have an understanding as</p> <p>14 to whether they would have a gain or a loss on</p> <p>15 the moment the transaction closed.</p> <p>16 Q. And did you have -- just looking</p> <p>17 at Exhibit 19, that schedule, does it reflect</p> <p>18 any gain to Barclays?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. It does not reflect any gain or</p> <p>21 loss to anybody.</p> <p>22 Q. It reflects that the assets</p> <p>23 matched the value of the liabilities that were</p> <p>24 going to be taken on by Barclays, right?</p> <p>25 MR. STERN: Objection to the form.</p>
Page 112	Page 113
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. I'd love to help you but I got to</p> <p>3 tell you what it says. It shows a list of</p> <p>4 assets and a list of liabilities and a set of</p> <p>5 numbers next to each. And it shows that they</p> <p>6 balance at the bottom.</p> <p>7 It doesn't purport to do anything</p> <p>8 else. I doesn't purport to talk about gains,</p> <p>9 losses, risks, benefits. That's all it does.</p> <p>10 So whatever -- I don't even know</p> <p>11 what you're trying to get to but that's not</p> <p>12 what this piece of paper says.</p> <p>13 Q. Well, let's look at the</p> <p>14 liabilities part of Exhibit 19.</p> <p>15 A. Um-hum.</p> <p>16 Q. Did -- and let's set aside for a</p> <p>17 moment cure and comp. Did Barclays actually</p> <p>18 take on any of these liabilities in the</p> <p>19 tran -- in what actually closed?</p> <p>20 A. And my recollection is no. And</p> <p>21 the reason for that is that we couldn't</p> <p>22 deliver them.</p> <p>23 Q. So the transaction that ultimately</p> <p>24 closed, did Barclays take on any liabilities</p> <p>25 related to the assets that it purchased?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 MR. STERN: Objection to the form.</p> <p>3 A. It took on a tremendous amount of</p> <p>4 risk and liability. I don't think you</p> <p>5 understand what liabilities are.</p> <p>6 Q. Okay. Why don't you describe to</p> <p>7 me --</p> <p>8 A. I already did.</p> <p>9 Q. Let's start with what liabilities</p> <p>10 meant in the context of Exhibit 19 that are</p> <p>11 being described here.</p> <p>12 A. My understanding is these are</p> <p>13 short positions.</p> <p>14 Q. And in the transaction that</p> <p>15 ultimately closed did Barclays take on any</p> <p>16 short positions?</p> <p>17 A. No. We were unable to deliver</p> <p>18 those positions to them.</p> <p>19 Q. Let's talk about what you did now</p> <p>20 on Friday, the 19th.</p> <p>21 When did you get to work on</p> <p>22 Friday, the 19th?</p> <p>23 A. I don't know. I don't remember if</p> <p>24 I went home. I'm sure I didn't actually.</p> <p>25 Q. What did you do prior to the court</p>

Page 114

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **hearing?**
3 A. The morning was spent trying to
4 work with Barclays as you previously asked
5 with respect to additional assets to try to
6 deal with their concern regarding the
7 positions that they were going to get and the
8 volatility in the market.
9 I then discussed with the
10 Creditors Committee at length the structure of
11 the transaction before the court hearing and
12 how it had evolved first with respect to some
13 additional assets that Barclays was looking
14 for and then with respect to how we were
15 unable to deliver any of the short positions.
16 Q. What did you do regarding finding
17 additional assets to address the concern
18 regarding positions on that Friday?
19 A. I didn't do anything.
20 Q. Okay. Let's talk about -- I'm
21 going to do every meeting that you had with
22 anyone with the Creditors Committee up until
23 the sale hearing. And then we'll talk about
24 the time after that.
25 What was the first meeting you had

Page 116

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 our positions, holding customers in, and
3 holding employees in.
4 Q. Anything else that you said
5 regarding the structure of the transaction?
6 A. Not that I recollect.
7 Q. Did you say that there was going
8 to be a sale of assets?
9 A. Not that I recollect.
10 Q. Did you discuss anything about the
11 repo transaction?
12 A. Not that I recollect.
13 Q. Did you discuss at all what value
14 was being conveyed in assets or liabilities?
15 A. Just in respect of the business in
16 general.
17 Q. And what did you say on that?
18 A. That they were buying the US
19 franchise and the positions that would help
20 run the US franchise.
21 Q. And what did you say regarding
22 what you wanted to accomplish?
23 MR. STERN: Objection to the form.
24 A. Yes. I said I wanted to close a
25 transaction.

Page 115

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **with anyone related to the Creditors**
3 **Committee?**
4 A. In court on the 17th. I'm sorry,
5 the -- yeah, the 17th.
6 Q. Whom did you speak with?
7 A. Dennis Dunne. Luc Despins. And I
8 don't recall if Houlihan was there yet.
9 Q. Was it in the actual courthouse?
10 A. Um-hum.
11 Q. In the same room that the hearing
12 was taking place?
13 A. Yeah. I believe that they were in
14 by then.
15 Q. And what did you say?
16 A. I talked about the structure of
17 the transaction. What we were trying to
18 accomplish. And what their concerns were.
19 Q. What exactly, or to the best of
20 your recollection, did you say regarding the
21 structure of the transaction?
22 A. That we were trying to sell the
23 business to Barclays. That there were no
24 other buyers. That we would shortly be out of
25 business. That we were having trouble funding

Page 117

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 Q. Anything else that you remember
3 saying to the Creditors Committee on the 17th?
4 A. Not that I recollect.
5 Q. And what did the Creditors
6 Committee say to you?
7 A. They understood that the business
8 was very fragile. They understood that there
9 weren't other buyers, that employees had
10 previously tried to leave. They were getting
11 their arms around the transaction.
12 Q. Who in particular said any comment
13 relating to an understanding that there
14 weren't other buyers?
15 A. I don't recall specifically.
16 Q. And do you remember what
17 specifically was said?
18 A. No.
19 Q. You mentioned earlier that you
20 heard Creditors Committee's concerns. What
21 did anyone from the Creditors Committee say on
22 the topic of their concerns about the
23 transaction?
24 A. They wanted to understand it.
25 Knew it had to move fast. Knew that there was

Page 118	Page 119
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 significant risk that the whole business would</p> <p>3 fall apart. But they still wanted to spend</p> <p>4 time trying to understand the transaction.</p> <p>5 Q. And did they describe the process</p> <p>6 that they would go through to try to</p> <p>7 understand the transaction?</p> <p>8 A. No.</p> <p>9 Q. Did you provide any information --</p> <p>10 any documents to the Creditors Committee?</p> <p>11 A. In court at that particular</p> <p>12 meeting?</p> <p>13 Q. Yes.</p> <p>14 A. Not that I recollect other than</p> <p>15 the asset purchase agreement.</p> <p>16 Q. Had you given anything before that</p> <p>17 time to the Creditors Committee?</p> <p>18 A. Yeah. I don't know that I gave it</p> <p>19 to them because it was filed in court and they</p> <p>20 had it. No.</p> <p>21 Q. Anything else that you remember</p> <p>22 discussing what either side said in this</p> <p>23 meeting in the 17th with the Creditors</p> <p>24 Committee?</p> <p>25 A. No.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. What was the next time that you</p> <p>3 had any meeting with the Creditors Committee?</p> <p>4 A. I spent time, and I don't exactly</p> <p>5 know when it was, with Saul Burian, Brad Geer,</p> <p>6 and -- I forget her name. A woman from</p> <p>7 Houlihan. I just -- I know her -- I can't</p> <p>8 remember her name -- in the Lehman boardroom</p> <p>9 discussing the structure of the transaction,</p> <p>10 the business, the risk of the business.</p> <p>11 Generally the volatility of the markets and</p> <p>12 the assets.</p> <p>13 Q. Was this before the 19th sale</p> <p>14 transaction? Sale hearing?</p> <p>15 A. Yes. I'm pretty sure, yes.</p> <p>16 Q. Do you know if it was the same</p> <p>17 day?</p> <p>18 A. It was at night so it probably was</p> <p>19 either the night of the 17th or the night of</p> <p>20 the 18th.</p> <p>21 Q. And are those people you just</p> <p>22 described all with Houlihan?</p> <p>23 A. Yes.</p> <p>24 Q. And what's your understanding of</p> <p>25 Houlihan's role?</p>
Page 120	Page 121
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. They're the advisor to the</p> <p>3 Creditors Committee.</p> <p>4 Q. What in particular on this meeting</p> <p>5 did you say regarding the structure of the</p> <p>6 transaction?</p> <p>7 A. I don't recall the specifics. I</p> <p>8 just recall the meeting of where it was and</p> <p>9 how late it was.</p> <p>10 Q. Do you understand -- do you</p> <p>11 remember what you described generally about</p> <p>12 the structure of the transaction at that time?</p> <p>13 A. We talked about the deal. The</p> <p>14 risk in the market. The transfer of assets.</p> <p>15 The positions. The issues with respect to</p> <p>16 closing customer trades during the pendency of</p> <p>17 the transaction. How we would get it closed.</p> <p>18 The timing. The assets. I don't recall the</p> <p>19 actual specifics. But it was a diligence</p> <p>20 meeting on their part where they asked a lot</p> <p>21 of questions.</p> <p>22 Q. How did you discuss the deal to</p> <p>23 the Creditors Committee prior to the 19th</p> <p>24 court hearing?</p> <p>25 A. Generally that we were selling the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 business to Barclays. That Barclays would get</p> <p>3 the positions that were necessary to run the</p> <p>4 business. And generally what they would pay.</p> <p>5 And whether there would be significant</p> <p>6 drawings on the DIP which we didn't think so.</p> <p>7 Q. What was said regarding what they</p> <p>8 would pay?</p> <p>9 A. The value of -- I think we were</p> <p>10 just talking about the building, the data</p> <p>11 centers, 250. I don't recall specific</p> <p>12 discussions around the assets.</p> <p>13 Q. Do you remember if there was any</p> <p>14 discussion about the value of assets that were</p> <p>15 being conveyed to Barclays?</p> <p>16 A. There was definitely discussion of</p> <p>17 the assets. I don't recall the specifics.</p> <p>18 Q. Including the value of the assets?</p> <p>19 A. Yeah. That it was a big book and</p> <p>20 a significant amount of securities positions</p> <p>21 that had to be financed and transferred.</p> <p>22 Q. Did you describe -- do you think</p> <p>23 that you did describe what you believed the</p> <p>24 value of the assets were that were being</p> <p>25 transferred?</p>

Page 122	Page 123
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't recall talking about the</p> <p>3 specific numbers of the values because it was</p> <p>4 a diligence on their part. They were asking</p> <p>5 questions.</p> <p>6 Q. Did you give any documents that</p> <p>7 would go to the value of the assets that were</p> <p>8 being transferred?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you describe --</p> <p>11 A. It wasn't just the assets being</p> <p>12 transferred. It was the assets that were</p> <p>13 being retained as well.</p> <p>14 Q. Okay. Do you remember what was</p> <p>15 described about the positions?</p> <p>16 A. No.</p> <p>17 Q. Did you describe the repo</p> <p>18 transaction?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you describe how Barclays was</p> <p>21 stepping into the shoes of the repo</p> <p>22 transaction?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you describe that there had</p> <p>25 been any changes from the transaction as</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 described the previous time before the 17th?</p> <p>3 A. I don't recall that I had that</p> <p>4 discussion. Nor do I recall whether there had</p> <p>5 been changes by that point.</p> <p>6 Q. Do you remember anything that</p> <p>7 anyone from the Creditors Committee commented</p> <p>8 on the information that you gave?</p> <p>9 A. No. Only that the general</p> <p>10 comments regarding the understanding about</p> <p>11 the -- keeping the business together, trying</p> <p>12 to get the transaction done quickly. The risk</p> <p>13 in the deal. And personal issues regarding</p> <p>14 the transaction.</p> <p>15 Q. What do you mean by personal</p> <p>16 issues regarding --</p> <p>17 A. Just, you know, they are nice folk</p> <p>18 and understood that it was not an easy</p> <p>19 process.</p> <p>20 Q. In either of your meetings before</p> <p>21 the sale hearing on the 19th, did you ever say</p> <p>22 to anyone at the Creditors Committee in</p> <p>23 substance that Barclays would be making a</p> <p>24 profit out of this deal?</p> <p>25 A. I'm quite certain that I said this</p>
Page 124	Page 125
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 is a great deal for Barclays.</p> <p>3 Q. When you say you're quite certain,</p> <p>4 do you remember saying those words?</p> <p>5 A. Yes.</p> <p>6 Q. And how did you describe how it</p> <p>7 was a great deal for Barclays?</p> <p>8 A. Because this is a -- I think I</p> <p>9 said before, it's a great franchise that had</p> <p>10 significant value and significant</p> <p>11 income-generating capability and there were --</p> <p>12 it was going to be either completely lost or</p> <p>13 they would purchase it.</p> <p>14 Q. Did you describe in any substance</p> <p>15 whether Barclays was going to realize a gain</p> <p>16 upon acquisition as a result of this</p> <p>17 transaction?</p> <p>18 MR. STERN: Objection to the form.</p> <p>19 A. I don't quite understand the</p> <p>20 question so the Committee specifically said at</p> <p>21 one meeting we know this is a great deal. We</p> <p>22 understand that. We just want to know how</p> <p>23 great a deal it is.</p> <p>24 Q. And how great a deal did you</p> <p>25 describe?</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. It's a great deal.</p> <p>3 Q. Did you give any more specifics</p> <p>4 than that?</p> <p>5 A. No. We gave a lot of specifics</p> <p>6 going through line by line on Sunday what was</p> <p>7 being transferred and how -- how it was being</p> <p>8 transferred.</p> <p>9 Q. Staying, though, with the --</p> <p>10 before the weekend, so this 17th and then the</p> <p>11 19th meeting, did you convey at all that --</p> <p>12 first of all, did you provide any specifics</p> <p>13 for how this was a great deal for Barclays?</p> <p>14 A. Not that I recollect.</p> <p>15 Q. And when I say the substance of</p> <p>16 gain upon acquisition, did you convey in any</p> <p>17 way that at the end of this deal the money and</p> <p>18 assets that Barclays was taking was greater</p> <p>19 than the liabilities and money that Barclays</p> <p>20 was giving?</p> <p>21 MR. STERN: Objection to the form.</p> <p>22 A. Not that I recollect.</p> <p>23 Q. And do you know one way or another</p> <p>24 whether you disclosed to the Creditors</p> <p>25 Committee anything related to the repo</p>

Page 126

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **transaction prior to the sale hearing?**
3 A. Prior to the sale hearing on the
4 19th, yes.
5 **Q. Okay. What did you disclose to**
6 **the Creditors Committee regarding a repo**
7 **transaction?**
8 A. Specifically on the 19th I had a
9 lengthy call with Burien, Geer -- I don't
10 recall if it was Dunne or Despina or both --
11 and a guy whose name I forget who used to be
12 at Deutsche Bank who's a Committee advisor,
13 about the structure of the repo, the transfer
14 of the assets, and the mechanism doing it
15 through the repo, the changes that were
16 occurring before the hearing, the fact that we
17 no longer could deliver the short positions,
18 and the concern that Barclays had about the
19 value of the assets.
20 **Q. When was this?**
21 A. Before the hearing on the 19th.
22 Late morning -- early afternoon, late morning.
23 **Q. And what specifically did you say**
24 **regarding the structure of the repo?**
25 A. My recollection is that we talked

Page 128

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **funding liability.**
3 **Q. Well, did you describe to the**
4 **Creditors Committee on this call on the 19th**
5 **what assets were being given to Barclays --**
6 A. Categories of assets, yes.
7 **Q. Okay. Did you describe value of**
8 **the assets that were being given to Barclays?**
9 A. Generally I believe I worked off
10 of this sheet or some derivative of this
11 sheet.
12 **Q. Was it your understanding --**
13 **MR. CARDEN: Pointing to**
14 **Exhibit 19?**
15 **THE WITNESS: Yes, sorry.**
16 **Q. And was it your understanding as**
17 **of the 19th that the assets that were being**
18 **delivered to Barclays as part of that repo**
19 **transaction were the same as the assets that**
20 **were described on Exhibit 19?**
21 A. They definitely were not the same.
22 **Q. Why were you referring to that**
23 **sheet, Exhibit 19?**
24 A. I said this sheet or a derivative
25 of this sheet. So these are categories of

Page 127

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 about the fact that we could not deliver
3 shorts; that the longs were going to be
4 settled through a settlement of the repo; that
5 Barclays would own the risk of those
6 positions.
7 And basically that's it. The
8 mechanics of how that would happen. It was a
9 very fluid discussion.
10 **Q. Did you say -- did you describe**
11 **how Barclays had stepped into the shoes of the**
12 **Fed regarding the repo transaction?**
13 A. They already knew that.
14 **Q. How did they know?**
15 A. I don't know how they knew. They
16 knew. We discussed it. It was part of the --
17 it wasn't a secret.
18 **Q. And did you describe at all the**
19 **collateral and the specific assets that were**
20 **being transferred to Barclays as part of the**
21 **repo?**
22 A. Did I describe at all the
23 collateral and the specific assets that were
24 being transferred.
25 They had already assumed that

Page 129

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 assets. The specific assets would most
3 certainly not be the same. And the actual
4 amounts would change by market value or
5 trading of those assets that occurred during
6 the week.
7 **Q. So you described categories. Did**
8 **you describe at all the value of the assets**
9 **that were being transferred as part of the**
10 **repo transaction?**
11 A. Yes, yeah.
12 **Q. What exactly did you describe?**
13 A. I don't recall what the numbers
14 were but they were on the sheet.
15 **Q. Was there a sheet of paper that**
16 **you gave to the Creditors Committee?**
17 A. No. It was a phone call.
18 **Q. Okay. Then were on what sheet?**
19 A. Either 19 or a derivative of 19.
20 I don't know.
21 **Q. Do you remember if the number --**
22 **do you remember at all what the range of the**
23 **number was on the sheet that you were --**
24 A. I don't recall.
25 **Q. Hold on.**

Page 130	Page 131
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 -- the sheet that you were</p> <p>3 referring to when you were described the</p> <p>4 transaction to the Creditors Committee?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know if there's any sheet</p> <p>7 that looks something like this (indicating)</p> <p>8 that relates to the repo transaction?</p> <p>9 A. Is there a sheet that -- my</p> <p>10 recollection is that these assets, many of</p> <p>11 these assets, if not all, were involved, many</p> <p>12 of them were involved in the repo transaction.</p> <p>13 Q. Did you describe to the Creditors</p> <p>14 Committee anything related to the haircut that</p> <p>15 was associated with the repo?</p> <p>16 A. Not that I recollect.</p> <p>17 Q. Did you describe whether Barclays</p> <p>18 was going to keep all of that collateral as a</p> <p>19 result of the transaction?</p> <p>20 A. I believe we discussed the</p> <p>21 mechanic of how it would close.</p> <p>22 Q. And what did you describe on that</p> <p>23 topic?</p> <p>24 A. How the repo would be settled.</p> <p>25 There wouldn't be a purchase back. Barclays</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 would own the assets. And Lehman would not</p> <p>3 have an obligation to buy them back or make</p> <p>4 them whole if there was any shortfall.</p> <p>5 Q. And you made that description on a</p> <p>6 call on the 19th prior to the sale hearing?</p> <p>7 A. Yes.</p> <p>8 Q. And did you -- was there any</p> <p>9 discussion about whether the assets that you</p> <p>10 were saying Barclays would get to keep, how</p> <p>11 that value related to the amount of money that</p> <p>12 Barclays had paid as part of the repo</p> <p>13 transaction?</p> <p>14 A. I'm pretty sure we did that on the</p> <p>15 19th. We certainly -- I'm pretty sure, yes.</p> <p>16 Q. And what do you think you said on</p> <p>17 that topic?</p> <p>18 A. We talked about how much was</p> <p>19 advanced versus the amount of the market value</p> <p>20 of that collateral at the time it was</p> <p>21 purchased.</p> <p>22 Q. And what did you say?</p> <p>23 A. I don't recall the specifics but</p> <p>24 that there was clearly a haircut and</p> <p>25 discussion about that.</p>
Page 132	Page 133
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. How did you know the market value</p> <p>3 of the collateral?</p> <p>4 A. Other than from receiving a sheet</p> <p>5 that had numbers on it, I did not know it. I</p> <p>6 don't trade those products and check those</p> <p>7 marks.</p> <p>8 Q. Who gave you a sheet that had</p> <p>9 numbers that reflected the value of the</p> <p>10 collateral?</p> <p>11 A. I don't recall where I got the</p> <p>12 sheet from.</p> <p>13 Q. And how did you describe the</p> <p>14 changes that happened with the transaction</p> <p>15 before the hearing?</p> <p>16 A. Very much as I previously</p> <p>17 described to you that we discussed how</p> <p>18 Barclays was concerned about the values in the</p> <p>19 volatile market; that they were seeking</p> <p>20 additional assets; that we were trying to find</p> <p>21 different assets that may or may not have</p> <p>22 value or be pledgeable; that we had some</p> <p>23 assets that were not typical repo assets that</p> <p>24 we might be able to transfer them to give some</p> <p>25 more support to the transaction; that we had</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 expected to be able to transfer the</p> <p>3 liabilities, meaning the short positions but</p> <p>4 that we got closed out on those and were</p> <p>5 unable to do so and that Barclays would be</p> <p>6 able to take the longs naked meaning without</p> <p>7 any kind of offset.</p> <p>8 Q. I want to get an understanding of</p> <p>9 your knowledge of the value of the collateral</p> <p>10 prior to the sale hearing.</p> <p>11 A. Um-hum.</p> <p>12 Q. First of all, were you involved in</p> <p>13 any discussions with the Fed about the value</p> <p>14 of the collateral that would be pledged?</p> <p>15 A. No.</p> <p>16 Q. Were you involved in any</p> <p>17 discussions with Barclays prior to the sale</p> <p>18 hearing about the value of the collateral that</p> <p>19 they would take when they took over the repo?</p> <p>20 A. No.</p> <p>21 Q. Did you discuss with anyone --</p> <p>22 A. Other than my previously described</p> <p>23 description of my conversations with John</p> <p>24 Mahon.</p> <p>25 Q. Okay.</p>

Page 134

1 J. SEERY - HIGHLY CONFIDENTIAL
2 And in that did you come to an
3 agreement or discuss actual number of the
4 total value of the collateral that would go
5 over to Barclays?
6 MR. STERN: Objection to the form.
7 A. Just repeat that, please.
8 Q. Yeah. In your conversations with
9 John Mahon did --
10 A. I didn't give him the
11 pronunciation. He can pronounce his name
12 however he likes.
13 Q. Did he or you actually give a
14 number that was the value of the assets that
15 would go over to Barclays?
16 A. No.
17 Q. Did you know the number -- the
18 value of the assets that would go to Barclays
19 as part of the collateral when they took over
20 the repo?
21 A. I believe I did at the time, yes.
22 Q. And how did you know it?
23 A. I don't recall who told me.
24 Q. And what was it?
25 A. I don't recollect the exact

Page 136

1 J. SEERY - HIGHLY CONFIDENTIAL
2 paper looked like?
3 A. It liked like Exhibit 19.
4 Q. And did you say -- that number
5 that you were given, what was that? Was that
6 the value that Lehman had put on the value of
7 the collateral?
8 A. That's correct.
9 Q. Who derived that number?
10 A. I don't know.
11 Q. Do you know if Barclays
12 contributed to that number that you had?
13 A. They would not have -- my
14 understanding is that they would not have.
15 That would have been Lehman's number.
16 Q. Was -- did you know if there was a
17 number that came from the Fed?
18 A. No. I don't. Meaning that the
19 Fed valued it?
20 Q. Yeah.
21 A. No. The Fed didn't mark the
22 collateral.
23 Q. All right. What did anyone from
24 the Committee say -- what did anyone from the
25 Committee say on this telephone conference on

Page 135

1 J. SEERY - HIGHLY CONFIDENTIAL
2 number. It was north of \$40 billion.
3 Q. So you think you spoke to somebody
4 about it? Did you see also --
5 A. It was part of numerous
6 discussions with a variety of people. It
7 wasn't my responsibility so I didn't dwell on
8 the actual amount that they were getting. Or
9 paying.
10 Q. Okay. When you talked to the
11 Creditors Committee what did you say about
12 what is the number of the value of the assets
13 that Barclays was getting when they took over
14 the repo?
15 MR. STERN: Objection to the form.
16 A. When I talked to the Creditors
17 Committee did I have a number?
18 Q. Yes.
19 A. Yes.
20 Q. What was the number?
21 A. I don't recollect.
22 Q. And do you know where you got the
23 number from?
24 A. Off the sheet of paper.
25 Q. Do you know what the sheet of

Page 137

1 J. SEERY - HIGHLY CONFIDENTIAL
2 the 19th that was prior to the court hearing?
3 A. I don't recall specifically.
4 There was significant interchange about the
5 various categories. The value, the
6 volatility, why we lost the liabilities or the
7 shorts. The mechanics. Changes to the deal.
8 I don't recall the specific things that were
9 said. It was really explaining the deal and
10 then answering a lot of questions from Saul
11 and from the other gentleman who formerly had
12 been at Deutsche Bank.
13 Q. When you described this look for
14 seeking additional assets, did you describe --
15 put any numbers or value on the amounts of
16 assets that were being collected?
17 A. Not that I recollect.
18 Q. Or the number of assets that were
19 being demanded?
20 A. Not that I recollect.
21 Q. Did the Committee make any
22 response to that part that at this time Lehman
23 was still looking for additional assets to
24 convey to Barclays?
25 A. I don't recollect the specifics of

Page 138

1 J. SEERY - HIGHLY CONFIDENTIAL
2 their response. The general response would
3 have been -- I don't recollect the specifics.
4 Q. Okay. Anything else that you did
5 before you attend the sale hearing on Friday,
6 the 19th?
7 A. I think I spent some time on the
8 phone with Weil, Lori Fife and Harvey Miller.
9 I think Lori was prepping Bart McDade for the
10 hearing. I don't recall what else. There was
11 lots of prep for the hearing.
12 Q. And I don't want to go into
13 specifics of your communication but what were
14 generally the topics that you were
15 communicating with Weil prior to the hearing?
16 A. The structure of the deal. The
17 issue with respect to the assets. The
18 mechanics. The change. You know, how we
19 would deal with JPMorgan issues through the
20 weekend. How we would try to get the
21 transaction closed. Bart's testimony.
22 Changes to the documents. Whatever else they
23 needed any further explanations.
24 Q. How did you get to the court
25 hearing?

Page 140

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. Okay. Are you aware of any
3 disclosure to the court during that hearing of
4 the structure of the transaction being that
5 Barclays was going to take over the shoes of
6 the Fed related to the repo transaction?
7 A. I believe that that was the
8 substance of the conversation with respect to
9 part of the change -- you know, the mechanics
10 to how we'd get it done. I don't recall the
11 specifics but it was pretty clear -- my
12 recollection is it was pretty clear that we
13 talked about the changes to the agreement, the
14 issues with respect to the shorts, the overall
15 deal structure, and how we hoped to get it
16 closed. And the size obviously.
17 Q. And I know you probably don't
18 remember the numbers but was the number that
19 was described about the value of the
20 collateral that would be part of what Barclays
21 took when they overtook the repo transaction
22 consistent with your understanding of what
23 that value was?
24 MR. STERN: Objection to the form.
25 A. I'm not sure I understand your

Page 139

1 J. SEERY - HIGHLY CONFIDENTIAL
2 A. Usually I take the subway.
3 Q. Okay. Now, at the court hearing
4 who did you speak to at the court hearing
5 besides pleasantries where you actually had
6 substantive conversations with?
7 A. Certainly substantive
8 conversations with the Weil team. Bart
9 McDade. I don't recall if I had any other
10 substantive conversations with anyone -- any
11 other constituents at that hearing. And then
12 I had with me two people from Lehman.
13 Q. Who did you in particular speak to
14 on the Weil team?
15 A. Lori Fife. Harvey Miller. Shai
16 Waisman. I don't remember if Roberts was
17 there or not. I don't recall.
18 Q. During the sale hearing did you
19 speak with anyone back at Lehman who wasn't at
20 the sale hearing?
21 A. I spoke to -- I said there were
22 two Lehman people with me at the hearing. And
23 I don't recall if I had any conversations,
24 phone conversations, with anyone back at
25 Lehman from the hearing.

Page 141

1 J. SEERY - HIGHLY CONFIDENTIAL
2 question. Did I -- if your question is did
3 numbers that were spoken about in court
4 generally correspond with my understanding of
5 the transaction the answer is yes.
6 Q. And do you remember any disclosure
7 made to anyone at the court regarding the
8 search and giving of additional assets to --
9 A. My recollection is yes. I think
10 it was.
11 Q. And that was disclosed to the --
12 your memory is that it was disclosed to the
13 judge in open court?
14 A. I thought that's -- I think that's
15 the case, yes.
16 Q. Okay.
17 So showing you an exhibit
18 previously marked as Exhibit 319 and the top
19 of the chain is from Alex Kirk to James Seery
20 with the subject, "What's going on?"
21 Do you recognize this document?
22 A. I know what it is. I don't know
23 that I've seen this before.
24 Q. Does it look like e-mail
25 correspondence between yourself and Mr. Kirk

Page 142

1 J. SEERY - HIGHLY CONFIDENTIAL
2 on the 19th?
3 A. Yes.
4 MR. STERN: Why don't you take a
5 moment to read through the e-mails.
6 (Document review.)
7 Q. So my question is going to be
8 first why were you asking Mr. Kirk the second
9 to the top, "What is the value of the
10 collateral that Barclays posted to the DTC
11 today?"
12 A. I don't recall specifically.
13 Q. Do you know if somebody requested
14 that you do it?
15 A. I don't recall if someone
16 requested it or not.
17 Q. And what do you mean by the
18 collateral that Barclays posted to the DTC
19 today?
20 A. I think what I -- I think that's a
21 misstatement. What I'm asking is what's the
22 value of the repos on that day.
23 Q. And why were you asking somebody
24 else?
25 A. I didn't have the number at my

Page 144

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. And now I'm showing you a document
3 previously marked as Exhibit 320 that goes
4 from Bates numbers 10293820, also through -820
5 although it is a second page. And on top it's
6 from Jean-Francois Astier to Alex Kirk.
7 Do you recognize this document?
8 A. I don't think I've ever seen this.
9 Q. And I'll note for the record that
10 you don't appear to be copied on these.
11 But I want you to look -- if you
12 look at the bottom of the first page you see
13 there's an e-mail from Erika Weinberg to Rod
14 Miller. Do you know who Erika Weinberg is?
15 A. No.
16 Q. Do you know who Rod Miller is?
17 A. Yes.
18 Q. Who's Rod Miller?
19 A. He's a partner at Weil.
20 Q. And it says, "Did you know that
21 Barclays closed out their repo with Lehman and
22 took all of the assets as collateral? Beth
23 was concerned. This happened right before
24 close of market."
25 And you'll see a little bit higher

Page 143

1 J. SEERY - HIGHLY CONFIDENTIAL
2 fingertips.
3 Q. And so Mr. Kirk writes, "I believe
4 the value is 45.5. I don't know the marked
5 value."
6 Did you convey that information to
7 anybody?
8 A. I don't recall.
9 Q. And did you ever find out what the
10 marked value was?
11 A. I don't recall.
12 Q. Do you know whether it's accurate
13 that the value of that collateral is 45.5?
14 A. I don't know. My assumption is
15 that the original posting amount was 45.5 but
16 there was, as I said, a lot of market
17 volatility so there could have been a change
18 in the value which is --
19 Q. Do you know one way or the other
20 whether that's an accurate value for the
21 amounts of collateral that was -- that was
22 part of that repo transaction?
23 A. I don't know.
24 MR. STERN: Is -- oh, this is
25 previously marked.

Page 145

1 J. SEERY - HIGHLY CONFIDENTIAL
2 it asks, "Is this part of a plan?"
3 And way at the top it says, "I
4 don't understand it either. Seery says it is
5 okay. He's walking out to call you."
6 Do you remember any conversations
7 with any of the folks on this chain,
8 Jean-Francois Astier, Rod Miller, or Erika
9 Weinberg, on the subject of Barclays closing
10 out the repo and taking all the assets as
11 collateral?
12 A. Jean-Francois was at the hearing.
13 I don't recall the specifics of the
14 conversation and I don't think that Barclays
15 closed out the repo. And if they closed out a
16 repo they wouldn't hold assets as collateral
17 so it doesn't really make sense.
18 Q. Explain what you mean by that.
19 A. When you close out a repo you own
20 the assets in the repo structure as we
21 discussed earlier so when you close out the
22 repo it means that the counterparty has failed
23 to buy them back. You already own them. You
24 just close it out.
25 Q. And what was your understanding --

Page 146

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **if this is inaccurate, in what way is it**
3 **inaccurate in relation to what happened?**
4 MR. STERN: Objection to the form.
5 A. I thought they carried, meaning
6 Barclays, the repo over the weekend. I don't
7 recollect that this is what happened.
8 **Q. Okay. Do you remember having a**
9 **conversation -- of coming out of the**
10 **courthouse to discuss this issue?**
11 A. I don't -- I don't remember if I
12 was actually able to get out and talk to Alex.
13 I don't recollect having been able to do that.
14 **Q. Okay. Let's -- what did you do**
15 **related to this transaction or negotiations**
16 **following the sale hearing?**
17 A. Following -- give me a two-minute
18 break?
19 **Q. Okay.**
20 **(Recess taken.)**
21 BY MS. TAGGART:
22 **Q. What were your activities related**
23 **to negotiations with the transaction following**
24 **the sale hearing on the 19th?**
25 A. Let me just try to set it up

Page 148

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 business.
3 So we went over there and my
4 responsibility when I got there was to help
5 work with the Committee through the
6 transactions. I mentioned earlier I sat in on
7 the discussion, argument, negotiation, with
8 JPMorgan as did the Committee. And then spent
9 a lot of time with Weil and with the Committee
10 and that was again Saul, Brad, the guy from --
11 the former Deutsche Bank guy as well as --
12 **Q. Mike Fazio?**
13 A. Yeah. Yeah. Thank you.
14 As well as I believe it was Luc
15 that was there, not Dennis. But I don't
16 have -- it was one or the other.
17 **Q. Okay.**
18 A. And that went all night until we
19 reached agreement, the Committee signed off,
20 and we closed.
21 **Q. What topics were discussed with**
22 **the Committee on the 21st?**
23 A. Specifically the assets that were
24 being transferred to -- the positions that
25 were being transferred to Barclays. And the

Page 147

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 because I'm not sure exactly. The 19th -- the
3 hearing on the 19th went very late into the
4 night. And there were a number of discussions
5 at the hearing. Objections. Passion pleas
6 from Danny Golden and the like. And we broke
7 with some open items with the court approving
8 the transaction my recollection is subject to
9 the Committee sign-off on the final deal
10 terms. For some reason I don't have a lot of
11 recollection of Saturday. I just don't
12 remember what the heck we did. I don't think
13 I went home.
14 And on the 21st there were just --
15 there were a number of things to clean up to
16 try to get to the transaction. I don't
17 remember if I was in contact with the
18 Committee or not.
19 On the 21st I got called to Weil
20 by Alex because there was concern that
21 JPMorgan was causing significant problems and
22 might not clear trades that would probably put
23 Barclays in a position where they didn't want
24 to close the deal and take the risk of the
25 assets on or buy the other parts of the

Page 149

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 mark value of those positions versus the
3 amount that Barclays had put up against them.
4 And the mechanics of how that would happen
5 that the repo would be closed out, that Lehman
6 would give up -- would be relieved of its
7 obligation to buy them back and Barclays would
8 own the positions at a risk.
9 **Q. What did you say about the marked**
10 **value versus the amount put up against them?**
11 A. There were numerous discussions
12 regarding those values, the different kinds of
13 positions on the sheet, the issues with
14 respect to JPMorgan and the transfer of
15 certain of the assets and the reduction in the
16 size of the positions versus the cash that
17 Barclays put up. Very detailed discussions
18 that the risk or the benefit was going to be
19 Barclays' with respect to those positions and
20 the amount they put up.
21 **Q. What did you say was the marked**
22 **value of the positions that Barclays was**
23 **taking over?**
24 A. I don't recall the numbers.
25 **Q. Did you recall whether it was more**

Page 150	Page 151
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 or less than the cash that had been put up?</p> <p>3 A. It was more.</p> <p>4 Q. Do you know about how much more?</p> <p>5 A. I don't recall the number. It was</p> <p>6 not an insignificant amount of money. Meaning</p> <p>7 it was a significant amount of money.</p> <p>8 Q. Do you know if it was more or less</p> <p>9 than \$5 billion?</p> <p>10 A. I don't remember if it was more or</p> <p>11 less than 5.</p> <p>12 Q. Do you know if it was more or less</p> <p>13 than the amount that had been told the court</p> <p>14 on the hearing on Friday?</p> <p>15 A. I don't recall the amount -- the</p> <p>16 specific amounts from the court hearing versus</p> <p>17 the amounts on Sunday.</p> <p>18 Q. But do you just remember the</p> <p>19 relative amount -- do you remember that the</p> <p>20 marked value of the collateral that was being</p> <p>21 given to Barclays, that amount being higher</p> <p>22 than what had been described to the court on</p> <p>23 Friday?</p> <p>24 MR. STERN: Objection to the form.</p> <p>25 A. I don't recall that the amount was</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 higher. What I recall is that it was higher</p> <p>3 than the amount of cash that was put up in</p> <p>4 both instances.</p> <p>5 Q. Do you know if -- what about</p> <p>6 comparing kind of the delta between the</p> <p>7 collateral amount and the cash described to</p> <p>8 the court and the delta between the</p> <p>9 transaction as you were describing? Do you</p> <p>10 know if that delta had increased?</p> <p>11 A. Do you mean had the haircut</p> <p>12 increased? I don't recall. The delta would</p> <p>13 be the change between the two numbers. Not</p> <p>14 between two sets of numbers.</p> <p>15 Q. Okay.</p> <p>16 A. But I don't recall whether it had</p> <p>17 gone up or down. I don't know.</p> <p>18 Q. Okay. And do you remember in any</p> <p>19 way conveying that the value that Barclays was</p> <p>20 receiving of collateral versus the cash that</p> <p>21 it gave up had increased from the way that it</p> <p>22 was described on the 19th?</p> <p>23 MR. STERN: Objection to the form.</p> <p>24 A. I don't recall if it was a</p> <p>25 different amount. It was -- the marked value</p>
Page 152	Page 153
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 of the assets was higher than the amount of</p> <p>3 cash put up. And we had numerous discussions</p> <p>4 regarding that.</p> <p>5 Q. Okay. What did you discuss</p> <p>6 regarding that?</p> <p>7 A. That it was higher. Why. Where</p> <p>8 was the risk. What were the types assets.</p> <p>9 What was the potential benefit to Barclays.</p> <p>10 What was Barclays' potential risk.</p> <p>11 Q. And what did you describe was the</p> <p>12 potential benefit to Barclays?</p> <p>13 A. We went through line by line.</p> <p>14 Barclays' potential benefit was that they</p> <p>15 could manage this very large book of assets</p> <p>16 and gain a profit from those positions.</p> <p>17 Barclays' risk was that in this</p> <p>18 market at the time they would be unable to do</p> <p>19 that well and they could have a significant</p> <p>20 loss.</p> <p>21 Q. Did you discuss at all the topic</p> <p>22 of whether the marked value of that assets was</p> <p>23 the appropriate way to value the assets?</p> <p>24 A. Whether the marked value was the</p> <p>25 appropriate way. We talked about -- I don't</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 recall -- we certainly talked about the marks</p> <p>3 and whether the marks were subject to change</p> <p>4 and the risk inherent in those types of</p> <p>5 assets. I don't recall if we talked about</p> <p>6 whether there was a different way to value an</p> <p>7 asset, a position. I'm pretty sure we didn't</p> <p>8 because that's the generally accepted way to</p> <p>9 value those assets.</p> <p>10 Q. Did you believe on the 9 -- on</p> <p>11 Friday, the 21st, that those marks were</p> <p>12 accurate?</p> <p>13 A. Sunday the 21st?</p> <p>14 Q. Sorry. Sunday the 21st.</p> <p>15 A. My belief is that they were</p> <p>16 accurate. I didn't know. And I did know that</p> <p>17 the assets were subject to a volatile market</p> <p>18 again. So there were -- there were repo-able</p> <p>19 assets but the assets would change hour by</p> <p>20 hour.</p> <p>21 Q. Did you have any discussions about</p> <p>22 the additional assets that were being</p> <p>23 transferred separate from the assets</p> <p>24 transferred as part of the repo?</p> <p>25 A. I don't recollect those</p>

Page 154	Page 155
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 discussions. We discussed in detail each of</p> <p>3 the provisions of the contract.</p> <p>4 Q. And what documents did you provide</p> <p>5 to the committee?</p> <p>6 A. There certainly was a large</p> <p>7 position sheet that I recollect which was a</p> <p>8 ledger with all of the positions in it. I</p> <p>9 don't recall specifically giving that to them</p> <p>10 but I know they had it.</p> <p>11 Q. Who was giving you information</p> <p>12 about the positions at that time?</p> <p>13 A. I don't recollect who had --</p> <p>14 whether that had come from Paolo Tonucci or</p> <p>15 someone else in Ian Lowitt's group but it was</p> <p>16 someone at Lehman. And then the folks from</p> <p>17 Barclays had all of the positions that they</p> <p>18 had taken in with the Lehman marks on them.</p> <p>19 Q. And what was the Committee's</p> <p>20 reaction to this information?</p> <p>21 A. Questions. Analysis. Discussion.</p> <p>22 Q. Were there any concerns about the</p> <p>23 value of the assets that were being conveyed</p> <p>24 to Barclays?</p> <p>25 A. There was certainly discussion</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 about it. I'm not sure what you mean by</p> <p>3 concern.</p> <p>4 Q. Did the Committee voice any</p> <p>5 concerns that the amount of assets or value</p> <p>6 being conveyed to Barclays was too high?</p> <p>7 A. They thought it was a great deal</p> <p>8 and wanted to know if there was a better deal</p> <p>9 that we could get. We believed that there was</p> <p>10 not; that that was the transaction that we'd</p> <p>11 shown to the court, that was the transaction</p> <p>12 that we were charged with closing, and it was</p> <p>13 up to them to say whether we were going to get</p> <p>14 it done or not.</p> <p>15 Q. What did they say on that it was a</p> <p>16 great deal?</p> <p>17 A. They were hoping to get more</p> <p>18 dollars from Barclays.</p> <p>19 Q. You mean the Committee was</p> <p>20 expressing that they felt Barclays was making</p> <p>21 a great deal because Barclays was getting a</p> <p>22 lot of value.</p> <p>23 A. Yes.</p> <p>24 Q. And what did you say on saying</p> <p>25 that this was the same transaction that had</p>
Page 156	Page 157
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 been presented to the court?</p> <p>3 A. That this is the deal. Right?</p> <p>4 That it may be a great deal for Barclays, it</p> <p>5 may not be. The value of a treasury or agency</p> <p>6 on day one could be considerably higher or</p> <p>7 lower the next day. That hedging a book of</p> <p>8 40-plus billion dollars was incredibly tough</p> <p>9 and incredibly risky in a very difficult,</p> <p>10 illiquid market and that this is the deal that</p> <p>11 we could do and they could either say yes or</p> <p>12 no.</p> <p>13 MR. STERN: They being?</p> <p>14 THE WITNESS: The Committee.</p> <p>15 Q. Okay. And what did the Committee</p> <p>16 ultimately say on their ultimate opinion about</p> <p>17 the transaction?</p> <p>18 A. That they wished we could get a</p> <p>19 better deal but that was the only deal and</p> <p>20 they approved the deal.</p> <p>21 Q. Who in particular said that?</p> <p>22 A. The group -- I don't remember if</p> <p>23 it was in unison shouted but they all</p> <p>24 acknowledged agreement to the deal. So Mike,</p> <p>25 Saul, Luc, and Brad.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 MS. TAGGART: We need to mark this</p> <p>3 one.</p> <p>4 (Deposition Exhibit 338B,</p> <p>5 photocopy of handwritten document,</p> <p>6 marked for identification as of this</p> <p>7 date.)</p> <p>8 BY MS. TAGGART:</p> <p>9 Q. I've put before you a document</p> <p>10 we're marking 338B which has a lot of</p> <p>11 handwritten notations.</p> <p>12 Have you seen this document</p> <p>13 before?</p> <p>14 A. No.</p> <p>15 Q. Is any of this your handwriting?</p> <p>16 A. I don't think so.</p> <p>17 Q. Do you know if this document was</p> <p>18 given to the Committee?</p> <p>19 A. I have no idea. I've never seen</p> <p>20 it before.</p> <p>21 Q. Do you know what any of these</p> <p>22 markings mean?</p> <p>23 A. I don't know what this is.</p> <p>24 Q. Okay.</p> <p>25 MR. STERN: Can I ask what the</p>

Page 158	Page 159
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 source of this document is?</p> <p>3 MS. TAGGART: I believe that it is</p> <p>4 from the Committee. Something given to</p> <p>5 them.</p> <p>6 MR. STERN: I see. Because it's</p> <p>7 not Bates stamped. In other words, it</p> <p>8 hasn't been produced in connection with</p> <p>9 this discovery.</p> <p>10 MS. TAGGART: Right.</p> <p>11 MR. STERN: Okay.</p> <p>12 BY MS. TAGGART:</p> <p>13 Q. Tell me about your conversation</p> <p>14 regarding JPMorgan.</p> <p>15 A. The Committee was in the room</p> <p>16 during those negotiations. It was a rather</p> <p>17 large room at Weil. And it really centered</p> <p>18 around some additional cash that Barclays was</p> <p>19 going to put up. An extra approximately</p> <p>20 \$7 billion. And they were willing to put it</p> <p>21 up for what they viewed as repo-able</p> <p>22 securities. And the discussions and argument</p> <p>23 and negotiations were around -- a lot around</p> <p>24 Racers and a lot of collateral debt Barclays</p> <p>25 did not want to take from JPMorgan and that</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 JPMorgan was trying to push onto Barclay.</p> <p>3 Q. And was there a resolution that</p> <p>4 was reached before closing the transaction?</p> <p>5 A. Yes. JPMorgan agreed that they</p> <p>6 would -- that it wasn't Barclays</p> <p>7 responsibility -- my recollection is that it</p> <p>8 wasn't Barclays responsibility to take this</p> <p>9 other collateral out of the box from JP and</p> <p>10 that JP would not stand in the way of closing</p> <p>11 the trade, the sale to Barclays, and would</p> <p>12 continue to facilitate the closing of trades</p> <p>13 that Barclays would make as the owner of the</p> <p>14 new business. And I don't know if they agreed</p> <p>15 any further to keep them as the clearing bank</p> <p>16 or not. I just don't know.</p> <p>17 Q. In your discussion at all with the</p> <p>18 Committee now prior to the transaction closing</p> <p>19 did you convey the substance that Barclays at</p> <p>20 the end of this would be making a profit or</p> <p>21 otherwise gain at the closing?</p> <p>22 MR. STERN: Objection to the form.</p> <p>23 A. Well, the Committee said, Look,</p> <p>24 they're getting -- they're going to close out</p> <p>25 these assets and they're going to own these</p>
Page 160	Page 161
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 assets that are worth more than the amount</p> <p>3 that they put up.</p> <p>4 Q. Did you agree with that?</p> <p>5 A. It's just math. Yeah. Of course.</p> <p>6 Q. And I think we've asked before but</p> <p>7 do you remember at all the extent of that gain</p> <p>8 that was being discussed on that Sunday?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. Well, the question -- it's not</p> <p>11 necessarily a gain or a loss because they</p> <p>12 don't book and take gains or losses by the</p> <p>13 minute so it would really depend on where they</p> <p>14 came out at the end of the transaction.</p> <p>15 Q. But --</p> <p>16 A. I don't even know that -- I don't</p> <p>17 know how Barclays accounts for those types of</p> <p>18 transactions, whether they mark to market</p> <p>19 daily, whether they have a book and hold. I</p> <p>20 don't know how they would account for it at</p> <p>21 the end.</p> <p>22 But the question -- if your</p> <p>23 question is did the Committee know that the</p> <p>24 amount of cash advanced was less than the</p> <p>25 amount of the assets, the answer is yes. Did</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 we discuss it, the answer is yes. Did they</p> <p>3 say is that too much, the answer is yes. Did</p> <p>4 we go through a view as to whether there was</p> <p>5 some other transaction we could do, the answer</p> <p>6 is yes. Did they accept that that was what</p> <p>7 Barclays would get, the answer is yes.</p> <p>8 Q. And do you remember any further</p> <p>9 discussion about the difference between the</p> <p>10 cash and the amount of assets?</p> <p>11 A. That's a lot of discussion.</p> <p>12 Q. Okay.</p> <p>13 A. I don't recall anything else.</p> <p>14 Q. Any numbers?</p> <p>15 A. I just don't recall the numbers.</p> <p>16 This was two weeks -- a week and a half.</p> <p>17 Q. There were some numbers discussed</p> <p>18 but you don't remember offhand today.</p> <p>19 A. We had cheats in front of us,</p> <p>20 yeah. We were talking real numbers. It</p> <p>21 wasn't theoretical.</p> <p>22 Q. And what did you say about your</p> <p>23 view whether there were other transactions</p> <p>24 possible?</p> <p>25 A. That there weren't. Because we</p>

Page 162

1 J. SEERY - HIGHLY CONFIDENTIAL
2 had been in court. Lehman had tried to shop
3 prior to the bankruptcy itself. That the
4 credit crisis that was going on in mid to
5 late -- mid '08 through the summer and then
6 post Lehman's filing, no one was showing up to
7 finance these positions or to buy Lehman
8 Brothers.
9 And there were a number of, you
10 know, potential parties that could have if
11 they thought it was such a great and riskless
12 deal. For example, JPMorgan could have easily
13 afforded and taken down the whole thing. But
14 they didn't think it was so special.
15 The Committee members, Danny
16 Golden talked about possibly putting together
17 at court a bunch of guys to come in and do
18 this trade. They never did. So there wasn't
19 another deal.
20 Q. Were there any changes made to the
21 transaction on Sunday, the 21st?
22 MR. STERN: Objection to the form.
23 A. Not that I recall. This was
24 the -- no. I don't think so.
25 Q. Okay.

Page 164

1 J. SEERY - HIGHLY CONFIDENTIAL
2 involved in those discussions.
3 Q. And was there more than one
4 meeting with the Creditors Committee?
5 A. It would be as if we were having
6 this discussion here today. Discussion,
7 leave, back. It's really one meeting with
8 breaks.
9 Q. Who was the one who described the
10 deal to the Creditors Committee? Was that
11 you?
12 A. That was me.
13 Q. And what specifically were the
14 documents that you gave?
15 A. I don't recall. They had the
16 asset purchase agreement for sure and then we
17 both had a ledger and the way it transpired
18 was Saul and I believe Luc, but I don't
19 recollect Luc specifically, coming up and
20 asking with Mike -- Mike was there for sure.
21 They said here's the description that they
22 understood the transaction. I believe that
23 the way that Saul said it was here's what I
24 understand, what am I missing.
25 Q. They had a document that described

Page 163

1 J. SEERY - HIGHLY CONFIDENTIAL
2 MS. TAGGART: Let's take a break.
3 We need to talk about kind of dividing
4 up the remaining time.
5 MR. STERN: Okay. Fair enough.
6 (Recess taken.)
7 BY MS. TAGGART:
8 Q. We talked about -- turning again
9 to Sunday the 21st, and the meeting with the
10 Creditors Committee, who else from Lehman was
11 having discussions with the Creditors
12 Committee?
13 A. Really nobody. The only other
14 person -- persons who were involved were Weil.
15 And that was Harvey, Lori, Roberts and Michael
16 Klein. He was in and out quickly.
17 Q. And did Harvey, Lori, and Roberts
18 also have discussions with the Creditors
19 Committee?
20 A. They were in the room when I was
21 having these discussions. And then I -- there
22 was someone else with me and I just can't
23 remember.
24 Q. Was Kirk there?
25 A. Kirk was there but he wasn't

Page 165

1 J. SEERY - HIGHLY CONFIDENTIAL
2 the transaction?
3 A. They had the asset purchase
4 agreement. They had their notes of the
5 transaction. And they had a ledger with the
6 positions on it.
7 Q. Okay. And what did you say they
8 were missing?
9 A. They weren't missing anything.
10 Q. They thought that accurately --
11 A. They were pretty accurate about
12 what the deal was and what the positions were
13 and what the numbers were. And we walked
14 through categories of assets.
15 Q. Were they in a different -- were
16 they in a different room from -- well, how
17 many rooms were there that there were
18 discussions going on on the 21st?
19 A. There were at least three, maybe
20 four rooms. There was the big giant room
21 where we started our first discussion. Then
22 there was a separate room that I had which is,
23 you know, a decent sized conference room. I
24 don't remember if they had their own
25 conference room. They must have. And then

Page 166

1 J. SEERY - HIGHLY CONFIDENTIAL
2 there was a room Barclays had. So there was a
3 Lehman room, a committee room, a big party
4 room, a Barclays room. And I don't recall if
5 there were others.
6 Q. Okay.
7 A. JP must have had their own room,
8 too.
9 Q. Did you ever come to an
10 understanding of the value of the assets on
11 the 22nd as of the -- the value of the assets
12 that were conveyed to Barclays?
13 MR. STERN: Objection to the form.
14 Q. Total value and total assets.
15 A. I don't quite understand what
16 you're asking me.
17 Q. Do you know sitting here today
18 what is the value of all of the assets that
19 were conveyed to Barclays as part of the
20 transaction with Lehman?
21 A. The value would change, you know,
22 moment by moment. But I don't know what that
23 number was at the time of close.
24 Q. And do you have an understanding
25 sitting here today of -- on the day of close

Page 168

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. When did you first have any
3 discussion about potential employment with
4 Barclays?
5 A. After the close. I assumed that
6 they'd want to keep me. And I actually
7 assumed that they wanted me to run their loan
8 business. But their structure was very
9 different from the way Lehman ran its
10 businesses. So I never really worried about
11 or discussed with them exactly what my role
12 would be. And started talking to them after
13 the close as they transitioned the business.
14 Q. Who was the first person at
15 Barclays that you spoke to on that topic?
16 A. I don't remember if it was Keegan
17 or if it was a guy named -- not Rich Ricci.
18 There was another Ricci spelled differently
19 who is the head of the loan business out of
20 London. His first name escapes me. Or if it
21 was Bomensath. It might have been Bomensath.
22 I don't recollect exactly. But we were --
23 once closed it was trying to keep as much of
24 the team together and transition the business
25 to Barclays as quickly as possible.

Page 167

1 J. SEERY - HIGHLY CONFIDENTIAL
2 on the 22nd whether Barclays realized a gain
3 and that the value that it received was more
4 than the value that it gave -- valued on the
5 22nd?
6 MR. STERN: Objection to the form.
7 A. Again, whether it's a gain or a
8 loss depends on how you account for it and
9 when you account for it. The simple math is
10 that the marked value of the assets that they
11 closed out was larger than the amount of cash
12 that they had previously put up.
13 Q. Do you know that difference?
14 A. I do not know the difference.
15 Q. Okay. What compensation did you
16 receive from Barclays when you worked there?
17 A. From Barclays?
18 Q. Yes.
19 A. I had a regular pay. I don't
20 remember what my salary is. [REDACTED]
21 Something like that. [REDACTED]
22 And then I had a bonus in the form of deferred
23 comp and I don't remember the exact number.
24 Q. Do you know the approximate range?
25 A. A [REDACTED]

Page 169

1 J. SEERY - HIGHLY CONFIDENTIAL
2 MS. TAGGART: Let's mark this as
3 the next one.
4 (Deposition Exhibit 339B, document
5 bearing production numbers
6 BCI-EX-(S)-00000648 through
7 BCI-EX-(S)-00000650, marked for
8 identification as of this date.)
9 BY MS. TAGGART:
10 Q. We're marking as Exhibit 339B a
11 document that goes from BCI-EX-(S)-000648
12 through -650 and at top is an e-mail from
13 Lindsay Martin on November 23rd.
14 Though you're welcome to read it
15 all I don't think that you are on this chain
16 and I in particular want to draw your
17 attention to the second down from Eric Felder
18 to Lindsay Martin that starts --
19 MR. STERN: Well, take your time.
20 Take your time to read it.
21 MS. TAGGART: All right. Let me
22 finish where he should be directed.
23 Q. -- that starts "Seery was part of
24 the top 50."
25 So read that part and then

Page 170

1 J. SEERY - HIGHLY CONFIDENTIAL
2 anything else you want to familiarize
3 yourself.
4 A. Okay.
5 (Document review.)
6 A. Okay.
7 Q. Okay. So you see in the e-mail
8 from Eric Felder it says "Seery was part of
9 the top 50 in FID so he had the conversation
10 on Friday."
11 And I also read in if you -- one
12 e-mail further down it says, "Found him,
13 thanks. Have you spoken to Hammack and Seery
14 yet?"
15 Did you speak to anyone -- Lindsay
16 Martin or anyone else from Barclays on --
17 before this time on September 23rd about your
18 employment?
19 A. No.
20 Q. Do you know what they're referring
21 to about the top 50 in FID?
22 A. Part of the transaction was
23 that -- and this I found out pretty late into
24 it, they wanted to make -- Barclays wanted to
25 make sure that they retained key personnel

Page 172

1 J. SEERY - HIGHLY CONFIDENTIAL
2 with DIP financing that you were looking into
3 or that resulted in the creation of
4 Exhibit 337B?
5 A. Yeah. I don't know if I actually
6 saw the contracts. I know others were
7 assembling them. In connection with the DIP I
8 did not look at any executory contracts. I
9 looked at payables.
10 Q. Okay. Well, I just want to be
11 clear that when you said there was something
12 in the neighborhood of 2.25 billion then you
13 were saying you saw some sort of document that
14 had payables on it.
15 A. Yes.
16 Q. All right. And were those
17 payables for the entire firm?
18 A. I don't recollect if it was the
19 entire firm. I would think we who would have
20 broken it out certainly just to the US
21 business. But I don't recollect.
22 Q. Well, if you look at Exhibit 337B
23 which I think is the DIP financing --
24 MR. STERN: Let's get that out.
25 Q. It's a pledge agreement.

Page 171

1 J. SEERY - HIGHLY CONFIDENTIAL
2 that helped drive the business. And so they
3 had a guaranteed bonus as a percentage of the
4 prior year's comp for certain individuals.
5 Q. And did you understand that you
6 were one of those individuals?
7 A. At some point I understood I was
8 one of those individuals and I believe it was
9 post close.
10 Q. Okay.
11 MS. TAGGART: That's all my
12 questions for now. If there's remaining
13 time I might have some more but I want
14 to give my colleagues a chance, too.
15 THE WITNESS: Sure.
16 * * *
17 EXAMINATION BY
18 MR. CARDEN:
19 Q. Mr. Seery, I'm David Carden,
20 special counsel for the estate.
21 When you spoke about having seen
22 some executory contracts I think early in the
23 week of the 15th which reflected as you recall
24 somewhere in the neighborhood of \$2.25 billion
25 of Lehman contracts, was that in connection

Page 173

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Does that pledge agreement relate
3 to a financing of the entire firm, that is the
4 entire Lehman Brothers Holdings, Inc.?
5 A. It relates to a financing of
6 Lehman Brothers Holdings, Inc. When you say
7 the entire firm, Europe was already gone.
8 Asia was gone. A number of other businesses
9 were beginning to be shut down. So it was to
10 Holdings but it didn't relate to what I would
11 describe as the entire company.
12 Q. Okay. Fair enough. It was an
13 agreement, though, to finance what was left of
14 Lehman Brothers as of the date it was
15 executed.
16 A. Correct.
17 Q. That also included LBI, didn't it?
18 A. Yes.
19 Q. And the list of payables that you
20 saw, do you know as you sit here today whether
21 that was a subpart of LBHI, that is only
22 related to the US business, or do you know if
23 it related to the entire firm?
24 A. I don't recollect. My -- I don't
25 recollect.

Page 174

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. Okay. You do understand -- well,
3 strike that.
4 You did understand, however, that
5 at the time that this DIP financing document
6 was created in the week of September 15th and
7 signed by you, that Barclays was not
8 interested in purchasing anything beyond
9 assets that were in North America, correct?
10 A. They were not going to. They were
11 very interested and wished they could have
12 done it.
13 Q. Fair enough. I should have --
14 A. And, in fact, committed to it.
15 Q. Yeab. Let me restate the question
16 because I understand your point.
17 At the time that the DIP financing
18 was entered into, Exhibit 337B, and you saw
19 payables in connection with that, Barclays was
20 not going to acquire anything other than the
21 North American assets.
22 A. That's correct.
23 Q. So some of the contracts that --
24 strike that.
25 Some of the payables that you saw

Page 176

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. And you did ask her to do that in
3 connection with DIP financing that's been
4 marked as 337B, right?
5 A. Yes.
6 Q. And the contracts that would have
7 been required for Lehman Brothers to operate
8 the -- what business was left would have
9 included foreign assets, wouldn't they?
10 A. Yes.
11 Q. Foreign subsidiaries, foreign
12 operations.
13 A. Not necessarily, no.
14 Q. Well, maybe I'm just unclear,
15 then. The DIP agreement that is marked as
16 337B would have provided the funding for
17 operating all that was left of Lehman Brothers
18 Holdings, Inc. as of that date, correct?
19 A. Correct.
20 Q. And as of that time there were
21 foreign operations for Lehman Brothers
22 Holdings, Inc. and subsidiaries, were there
23 not?
24 A. There were some foreign special
25 purpose entities that I don't believe required

Page 175

1 J. SEERY - HIGHLY CONFIDENTIAL
2 in connection with the DIP financing that's
3 337B related to non-US assets, didn't they?
4 MR. STERN: Objection to the form.
5 A. I don't know that.
6 Q. You don't know that one way or the
7 other?
8 A. I don't think -- I don't know one
9 way or the other. I don't believe that I
10 would have included, for example, Asian
11 payables in what my requirements were for the
12 amount to be paid in the US.
13 Q. When you say you wouldn't have
14 required it, did you ask someone to get the
15 list of payables?
16 A. Yeah.
17 Q. Okay. Who did you ask?
18 A. I believe Beth Rudofker.
19 Q. And did anyone help Beth, to your
20 knowledge?
21 A. I don't think she got it herself
22 so there were lots of people working on all of
23 these matters and this was, you know, in the
24 middle of the night. We're talking about
25 around the DIP right now.

Page 177

1 J. SEERY - HIGHLY CONFIDENTIAL
2 any funding, but the foreign businesses I
3 believe were basically gone by then. I don't
4 think we had funding obligations to Asia or to
5 Europe at that point.
6 Q. Do you know?
7 A. I'm pretty sure we didn't.
8 Q. Okay.
9 A. Europe had already filed. And I'm
10 pretty sure that Asia did. I don't recollect
11 exactly.
12 Q. Do you remember whether you asked
13 Beth only to provide you with executory
14 contracts for North America? Or for the
15 United States, rather?
16 A. I don't remember the exact
17 discussion.
18 Q. Now, at the time -- strike that.
19 When did you first see Exhibit 19
20 which is the balance sheet?
21 A. I don't remember.
22 Q. Do you remember how you came to
23 see it?
24 A. No.
25 Q. Do you remember who gave it to

Page 178

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 you?
3 A. Not specifically, no.
4 **Q. Do you have any idea why they gave**
5 **it to you?**
6 A. No.
7 **Q. Do you know if you saw it in or**
8 **about the date that it was -- that it bears in**
9 **the upper right-hand corner which is 9/16**
10 **which is a Tuesday?**
11 A. I don't recollect exactly when I
12 got it. I certainly got the asset purchase
13 agreement and I believe it was an exhibit to
14 it but I don't recall exactly.
15 **Q. Yeah. I'll -- I think your**
16 **counsel will permit me to -- will indulge me**
17 **to say it's not an exhibit but it is referred**
18 **to in the asset purchase agreement.**
19 A. Okay.
20 **Q. Do you know if you got this asset**
21 **purchase agreement and this Exhibit 19 on or**
22 **about the same time?**
23 A. I would think so, yes. I don't
24 know for sure.
25 **Q. Do you know who gave you the asset**

Page 180

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **Berkenfeld about the asset purchase agreement?**
3 A. Steve was on the floor negotiating
4 it and we definitely talked.
5 **Q. Do you remember having spoken to**
6 **him about the APA?**
7 A. Not specifically but we certainly
8 talked about the transaction.
9 **Q. Did you talk to anyone, to your**
10 **recollection, about Exhibit 19?**
11 A. I don't know if it was that
12 exhibit. We discussed either that document or
13 something derivative of it which I talked
14 about with numerous people.
15 **Q. Do you know -- strike that.**
16 **At some point you said that you**
17 **were responsible for -- and I don't want to --**
18 **I'm just paraphrasing for purposes of the**
19 **question, I don't want to put words in your**
20 **mouth -- the structure of the deal. You had**
21 **discussions concerning the structure of the**
22 **transaction.**
23 **Do you recall that testimony?**
24 A. Right. The mechanics and how the
25 structure would work and how we would get it

Page 179

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 **purchase agreement?**
3 A. I don't recollect.
4 **Q. Did you read it closely when you**
5 **got it?**
6 A. Not real close because it wasn't
7 what I had to deal with.
8 **Q. That's really kind of where I'm**
9 **going. You really didn't have any**
10 **responsibilities with regard to the asset**
11 **purchase agreement at that time, did you?**
12 A. Not drafting it or putting pieces
13 into it, no.
14 **Q. Or even implementing the**
15 **transaction that is described in it.**
16 A. Some of the implementation as I
17 described this morning I was heavily involved
18 in, yes.
19 **Q. You became involved in certain**
20 **aspects after the asset purchase agreement was**
21 **entered into. But do you know if the asset**
22 **purchase agreement was given to you in order**
23 **to enable you to perform those tasks?**
24 A. I don't recall specifically.
25 **Q. Did you ever talk to Steve**

Page 181

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 done, yes.
3 **Q. All right. Did you mean by that**
4 **that -- the relationship of assets to**
5 **liabilities in any respect?**
6 A. No.
7 **Q. And did anybody ever describe this**
8 **transaction to you as a wash transaction?**
9 A. No.
10 **Q. Do you know if this transaction**
11 **was described to the board as a wash**
12 **transaction?**
13 A. No, I have no idea.
14 **Q. Okay. As you look at Exhibit 19 I**
15 **think you testified that the assets and**
16 **liabilities add up, correct? They match.**
17 A. The numbers are the same.
18 **Q. The numbers are the same.**
19 **And you would agree with me, would**
20 **you not, that Exhibit 19 does not reflect any**
21 **kind of profit to Barclays on its face?**
22 **MR. STERN: Objection to the form.**
23 **Asked and answered.**
24 A. Exhibit 19 doesn't reflect
25 Barclays at all.

Page 182

1 J. SEERY - HIGHLY CONFIDENTIAL
2 Q. And for that -- well, you would
3 agree with me, would you not, that -- well,
4 let me back up a second.
5 Do you know whether Exhibit 19
6 with regard to the assets that are valued on
7 its face reflect a discount off what were then
8 the Lehman marks?
9 A. I do not know.
10 Q. Have you ever heard in connection
11 with the Lehman/Barclays transaction something
12 referred to as a clarification letter?
13 A. I don't think so.
14 Q. I'm going to show you what's been
15 previously marked as Exhibit 25. Have you
16 ever seen it before?
17 MR. STERN: Take your time.
18 (Document review.)
19 A. I don't recollect if I've seen
20 this document before.
21 Q. Okay. In any event, you had no
22 role or responsibility for preparing any
23 aspect of that document, did you?
24 A. No.
25 Q. Did you ever have any

Page 184

1 J. SEERY - HIGHLY CONFIDENTIAL
2 yes.
3 Q. Okay. What -- did anyone at
4 Barclays -- well, strike that. Look at
5 paragraph 13 of the clarification letter.
6 A. (Witness complies.)
7 MR. STERN: Take your time to read
8 it.
9 THE WITNESS: Um-hum.
10 (Document review.)
11 A. Okay.
12 Q. Did you ever have any conversation
13 with anybody about this paragraph?
14 A. No.
15 Q. Did you ever have a conversation
16 with anyone concerning the facts reflected in
17 the last sentence of the paragraph that the
18 notice of termination relating to the Barclays
19 repurchase agreement dated September 19th,
20 2008 would be rescinded?
21 A. No. As I testified earlier, I
22 didn't think that it even -- that there was
23 any such notice or that it had been done. It
24 doesn't make sense that it was done.
25 Q. When you say that it doesn't make

Page 183

1 J. SEERY - HIGHLY CONFIDENTIAL
2 conversations with anyone at any time about
3 there being a need from Barclays' standpoint
4 to terminate the repo transaction?
5 A. Yes.
6 Q. With whom did you have those
7 conversations?
8 A. The Committee. LaRocco. I'm
9 trying to think who else. My counsel. You
10 know, Weil.
11 Q. Was that on Sunday?
12 A. Yes.
13 Q. Tell me what you remember having
14 been said about Barclays' need to terminate
15 the repo transaction.
16 A. The transaction would be
17 terminated and that would be -- and Lehman
18 would be relieved of its obligation to buy
19 back and that would be how we would close.
20 That would be the mechanic.
21 Q. Did you tell them why -- strike
22 that.
23 Do you know why Barclays wanted to
24 terminate the repo transaction?
25 A. Did I know -- I believe I knew,

Page 185

1 J. SEERY - HIGHLY CONFIDENTIAL
2 sense that it was done, it doesn't make sense
3 that the termination notice was rescinded?
4 A. No, that it was actually -- that
5 there was a termination notice or that there
6 had been any kind of termination prior to the
7 closing.
8 Q. Did there come a time when you had
9 learned that there had been a termination
10 prior to closing?
11 A. Not before the testimony today.
12 Q. All right. So the first you knew
13 that in fact that the termination notice that
14 was dated September 19th was rescinded is in
15 speaking with me now.
16 A. Actually, a little bit -- well,
17 the rescinded, yes. The purported termination
18 was a little bit earlier today.
19 Q. All right. And I take it then
20 that you had no conversation with anybody
21 about Barclays about their desire to actually
22 rescind the prior termination notice.
23 A. No.
24 Q. Do you have any explanation for me
25 at all as to why they would need to rescind

Page 186

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 the prior termination notice?
3 MR. STERN: Objection to the form.
4 A. I have -- I didn't know that there
5 was one. As I said, it didn't make sense for
6 the way we were working all the way through.
7 I don't know why it was given on the 19th.
8 And it wouldn't have made sense if they were
9 going to carry it through the weekend which I
10 thought was the understanding.
11 Q. Okay. I take it you didn't have
12 any conversation with anybody on the Creditors
13 Committee about the rescinding of the prior
14 notice of termination.
15 A. No. And, in fact, the underlying
16 predicates of our conversation were that if
17 there would be a termination it would only be
18 at closing. Not that it had been previously
19 terminated.
20 Q. Now, on Thursday -- I think it was
21 Thursday, you testified that there was --
22 maybe the Friday -- there was a desire to find
23 some additional collateral to transfer
24 Barclays.
25 A. The days do run together but I

Page 188

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 was involved in that, yes.
3 Q. Were there conversations you had
4 with people at Lehman Brothers concerning
5 whether the collateral that was being
6 identified could be transferred?
7 A. Yes.
8 Q. With whom were you speaking?
9 A. Lowitt, Kirk, Tonucci, McDade.
10 Q. At any point in time did anybody
11 say to you at Lehman Brothers how much
12 additional collateral was being sought?
13 A. We certainly talked about the
14 amounts they sought. I don't remember the
15 amounts.
16 Q. Did they tell you how the amounts
17 were derived?
18 A. No.
19 Q. In other words, did they say to
20 you at any point that Barclays was looking for
21 an additional 1 billion, 2 billion, 3,
22 billion, 4 billion, \$5 billion?
23 A. I don't recollect the ask. There
24 definitely was an ask.
25 Q. There clearly was an ask, right?

Page 187

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 believe that was Friday morning.
3 Q. Okay. And I think you said that
4 you weren't aware of any specific amount of
5 collateral that was being sought.
6 A. No. It was generated as I
7 testified out of Barclays' nervousness
8 regarding the values in the transaction and in
9 the repo and their desire to have more assets
10 in that transaction.
11 Q. Do you know who at Lehman Brothers
12 was involved in trying to find additional
13 unencumbered assets to transfer to Barclays?
14 A. I believe I testified that it was
15 Lowitt and his team who would have included
16 Tonucci and others.
17 Q. And did you have any
18 responsibility whatsoever once you -- or
19 during the Friday to assist in any way
20 identifying any unencumbered collateral?
21 A. Certainly analyzing what we were
22 talking about in terms of potentially
23 providing additional collateral, whether it
24 could be provided, whether it was subject to
25 other liens, some of those kinds of concerns I

Page 189

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 A. Yes.
3 Q. You just don't remember what it
4 was.
5 A. I just don't remember the number.
6 I think Alex got that information. I don't
7 remember the --
8 Q. Alex Klein.
9 A. Kirk.
10 Q. Alex Kirk. That's what I mean.
11 Did you ever see any calculation,
12 ledger of any kind, on Friday as additional
13 unencumbered collateral was being sought that
14 reflected from Lehman's standpoint how much
15 value or what the value was of what Barclays
16 had already received?
17 A. You mean the value of the assets
18 subject to the repo?
19 Q. Yes.
20 A. We had our marks. And I think we
21 were living by our marks.
22 Q. And do you recall what your marks
23 were?
24 A. The amount?
25 Q. On the collateral actually already

Page 190	Page 191
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 transferred to Barclays.</p> <p>3 A. No. I don't recall the numbers.</p> <p>4 Q. Is it fair to say that after --</p> <p>5 well, strike that.</p> <p>6 Is it fair to say that from Monday</p> <p>7 morning, September 15th on, that you were not</p> <p>8 involved in the valuation of any of the</p> <p>9 collateral that went to Barclays in connection</p> <p>10 with the asset purchase agreement, proposed to</p> <p>11 go there, or which ultimately was transferred?</p> <p>12 MR. STERN: Objection to the form.</p> <p>13 Q. Let me restate it because it's</p> <p>14 compound. Let me say it this way.</p> <p>15 After Monday, September 15th, you</p> <p>16 had no involvement whatsoever in the valuation</p> <p>17 of any assets that Barclays received in the</p> <p>18 Lehman/Barclays transaction.</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. All right. If the question -- I</p> <p>21 think you're asking me did I put forth or was</p> <p>22 I involved in the values that were derived for</p> <p>23 marking those positions. The answer is no.</p> <p>24 But I did testify about my involvement with</p> <p>25 discussions regarding those values.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. I understand. I'm just talking</p> <p>3 about whether you were involved in deriving --</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 A. Those were not positions that I</p> <p>7 marked.</p> <p>8 Q. Yeah. Because I believe what you</p> <p>9 said was that the positions that you were</p> <p>10 responsible for marking, that is the loan</p> <p>11 portfolio, was not part of the transaction.</p> <p>12 A. That's right.</p> <p>13 Q. That's true for the private equity</p> <p>14 positions as well, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you did have some involvement</p> <p>17 in connection with the marking of private</p> <p>18 equity positions as well?</p> <p>19 A. Discussions around the value down</p> <p>20 at the Fed as well as checked on some of the</p> <p>21 positions. I did not have responsibility to</p> <p>22 mark those positions.</p> <p>23 Q. Okay. Now, did Eric Felder have</p> <p>24 any responsibilities for the valuation of any</p> <p>25 of the assets that were transferred to</p>
Page 192	Page 193
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Barclays?</p> <p>3 A. I don't -- did Eric Felder have --</p> <p>4 I'm sorry. Can you say that again?</p> <p>5 Q. Let me just restate it.</p> <p>6 To your knowledge, did Eric Felder</p> <p>7 have any responsibility for marking the</p> <p>8 positions -- marking the assets that went to</p> <p>9 Barclays in the Barclays/Lehman transaction?</p> <p>10 A. I believe that those -- at least</p> <p>11 some of those positions would have rolled up</p> <p>12 to Felder at that time. So he would have had</p> <p>13 ultimate responsibility for those marks.</p> <p>14 Q. Did you have any conversations</p> <p>15 with Felder during the week of September 15th?</p> <p>16 A. I didn't talk to him at all.</p> <p>17 Q. Pardon? You didn't talk to him?</p> <p>18 A. I didn't talk to him at all that I</p> <p>19 recollect.</p> <p>20 Q. Did you talk to -- I think you did</p> <p>21 say you talked to Mark Shafir, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Just generally speaking, what were</p> <p>24 you speaking to Shafir about?</p> <p>25 A. Generally the deal overall.</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Getting it done. Completing -- Mark was down</p> <p>3 at the Fed and was negotiating the deal</p> <p>4 through I think Wednesday. I forget when he</p> <p>5 left. And so he was around. And questions</p> <p>6 about how to get it done and whether we'd be</p> <p>7 able to hold the firm together pending the</p> <p>8 closing. What we were doing in that regard,</p> <p>9 et cetera.</p> <p>10 Q. You're aware that he did leave the</p> <p>11 employment of Lehman Brothers that week,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know why?</p> <p>15 A. No.</p> <p>16 Q. Was there ever any talk about why</p> <p>17 he left in the middle of the transaction?</p> <p>18 A. I assume he got a deal he liked.</p> <p>19 Q. But was there any discussion as to</p> <p>20 why he couldn't wait to Monday?</p> <p>21 A. No. And it was a little bit</p> <p>22 disconcerting.</p> <p>23 Q. It was disconcerting for him to</p> <p>24 leave in the middle of the transaction?</p> <p>25 A. Just not a good way to go out.</p>

Page 194	Page 195
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Q. And have you ever had any</p> <p>3 conversations with anybody about why he did</p> <p>4 leave in the middle of the transaction?</p> <p>5 A. No.</p> <p>6 Q. I take it then you have no opinion</p> <p>7 on why he did.</p> <p>8 A. No.</p> <p>9 Q. Now, you testified when you were</p> <p>10 in the conversations with the Committee on the</p> <p>11 Sunday, the 21st, that someone had a ledger of</p> <p>12 some kind.</p> <p>13 A. Yeah. We had ledgers which showed</p> <p>14 all the positions.</p> <p>15 Q. Okay. Were those ledgers that</p> <p>16 showed the positions of what was actually</p> <p>17 supporting what had been the Fed repo?</p> <p>18 A. They were -- I believe they were</p> <p>19 the close of Friday's positions that went to</p> <p>20 Barclays.</p> <p>21 Q. All right. So it was some part of</p> <p>22 what had been in the Fed repo?</p> <p>23 MR. STERN: Objection to the form.</p> <p>24 A. It may have -- I don't know. It</p> <p>25 may have or may not have. It was Friday's</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 close to Barclays.</p> <p>3 Q. Do you know whether or not all of</p> <p>4 the assets that had been supporting the Fed</p> <p>5 repo, in fact, were ultimately transferred to</p> <p>6 Barclays?</p> <p>7 A. I don't know. I would think not.</p> <p>8 Q. But in any event the ledgers that</p> <p>9 you had on Sunday showed the actual positions</p> <p>10 that had been transferred.</p> <p>11 A. Yes.</p> <p>12 Q. Right. Who prepared those, do you</p> <p>13 know?</p> <p>14 A. They would have been prepared out</p> <p>15 of Lehman treasury.</p> <p>16 Q. And they had Lehman marks, right?</p> <p>17 A. Yes.</p> <p>18 Q. Did you give copies of those to</p> <p>19 the Committee?</p> <p>20 A. I don't recall if I gave them.</p> <p>21 They had them.</p> <p>22 Q. Were they allowed to keep them?</p> <p>23 A. I'm sure they were. We didn't</p> <p>24 take any docs back.</p> <p>25 Q. All right. I'm sorry if I missed</p>
Page 196	Page 197
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 this but were there any other documents apart</p> <p>3 from the ledger that you just described that</p> <p>4 were shared with the Committee?</p> <p>5 A. Other than the asset purchase</p> <p>6 agreement and ancillary documents related to</p> <p>7 that, no. Not that I recollect.</p> <p>8 Q. Now, I'm not by any means meaning</p> <p>9 to diminish your role in any of this. It was</p> <p>10 obviously substantial. But I'm wondering why</p> <p>11 it was that you were the one selected to</p> <p>12 actually speak to the Committee on Sunday</p> <p>13 about the deal. Do you have any explanation</p> <p>14 for that?</p> <p>15 A. I think because Alex got called</p> <p>16 into the deal and I worked for Alex for ten</p> <p>17 years and done a lot of deals.</p> <p>18 Q. All right. And -- but Alex was</p> <p>19 not in the meeting with you, right?</p> <p>20 A. He was in some of the meetings,</p> <p>21 yeah.</p> <p>22 Q. I'm talking about the meeting with</p> <p>23 the Committee now.</p> <p>24 A. Yeah. Because we started in the</p> <p>25 big room after the JPMorgan. He was there at</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 that time. He stepped out and moved to</p> <p>3 another room. I don't know if he came back in</p> <p>4 or out of that meeting. But he there for a</p> <p>5 lot of the time.</p> <p>6 Q. All right. And you testified to</p> <p>7 this and I'm sorry because I didn't gather it</p> <p>8 all in, but other than Alex was anyone else</p> <p>9 from Lehman Brothers in the meeting with the</p> <p>10 Committee at which the deal was described?</p> <p>11 A. Yeah. The answer is yes, there</p> <p>12 was. And I just don't recall -- and I can't</p> <p>13 tell you why I just don't recall -- who else</p> <p>14 was sitting with me.</p> <p>15 Q. I want you to look for a moment at</p> <p>16 Exhibit 338B which is that handwritten</p> <p>17 document which you said you'd never seen</p> <p>18 before.</p> <p>19 Before we get it to, let me just</p> <p>20 ask you. I think you said in connection with</p> <p>21 the meeting with the Committee that you</p> <p>22 described the transaction as the one that had</p> <p>23 been shared with the court on Friday.</p> <p>24 MR. STERN: Objection to the form.</p> <p>25 A. Yes. Yeah, this was the</p>

Page 198	Page 199
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 transaction that we were discussing, yes.</p> <p>3 Q. Right. On Sunday you were</p> <p>4 describing that same transaction.</p> <p>5 A. Yes.</p> <p>6 Q. Had there been any changes, to</p> <p>7 your knowledge, in the transaction from the</p> <p>8 description of the transaction on Friday to</p> <p>9 the court, between that time and the time that</p> <p>10 you were meeting with the Committee on Sunday?</p> <p>11 MR. STERN: Objection to the form.</p> <p>12 A. I think I testified that there</p> <p>13 weren't material transaction changes to the</p> <p>14 structure. There would have been changes to</p> <p>15 the positions and the amounts.</p> <p>16 Q. Meaning valuations.</p> <p>17 A. Correct.</p> <p>18 Q. But you don't recall the quantum</p> <p>19 of those changes?</p> <p>20 A. No.</p> <p>21 Q. Do you remember which direction</p> <p>22 they went? In other words, were the asset</p> <p>23 values higher than what was being transferred</p> <p>24 or were they lower?</p> <p>25 A. I don't recollect. I mean, there</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 wasn't a lot going higher in those days.</p> <p>3 Q. Did you know at the time that you</p> <p>4 met with the Committee on Sunday that some</p> <p>5 cash had been transferred to Barclays?</p> <p>6 MR. STERN: Objection to the form.</p> <p>7 Q. Let me restate that question.</p> <p>8 Did you know at the time you spoke</p> <p>9 to the Committee that Lehman Brothers had</p> <p>10 attempted to transfer cash to Barclays?</p> <p>11 A. I don't recollect that right now.</p> <p>12 Q. Okay. Is there anything on</p> <p>13 Exhibit 338B that you can recognize as</p> <p>14 relating to the information -- I mean, I'm</p> <p>15 talking about the numbers now, okay? -- that</p> <p>16 you shared with the Committee on Sunday. I</p> <p>17 know it's not your document. I'm not trying</p> <p>18 to say that it is.</p> <p>19 But is there anything on here that</p> <p>20 you recognize that you would say, Yeah, well,</p> <p>21 that's basically what we communicated or no,</p> <p>22 it's very different than what we communicated?</p> <p>23 MR. STERN: Objection to form.</p> <p>24 A. I'm not exactly sure what -- how</p> <p>25 this document is set up, why it's got these</p>
Page 200	Page 201
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 four quadrants and what all -- what they're</p> <p>3 trying to lay out here. But these are in the</p> <p>4 neighborhood of the numbers that we talked</p> <p>5 about.</p> <p>6 Q. Okay. That's what I'm getting at.</p> <p>7 I mean, if you look back at Exhibit 19, you</p> <p>8 know, you'll see \$72 billion of assets,</p> <p>9 roughly and \$68 billion of liability. And you</p> <p>10 see the 72 and the 68 at the top here. And</p> <p>11 I'm not trying to put words in your mouth.</p> <p>12 I'm just trying to understand what -- since we</p> <p>13 don't have the ledger in front of us whether</p> <p>14 this bears any relationship at all to the</p> <p>15 information that was shared by you to the</p> <p>16 Committee on Sunday.</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. Yeah, I don't know the exact -- I</p> <p>19 don't recall the exact numbers but these are,</p> <p>20 you know, in ranges that the numbers we were</p> <p>21 talking about.</p> <p>22 Q. Okay. So let's just go through</p> <p>23 them so we're clear on what that means. We</p> <p>24 see the 72 and the 68. Leaving those aside</p> <p>25 for just a moment, you weren't talking, were</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 you -- well, let me ask you. In the meeting</p> <p>3 with the Committee on Sunday were you speaking</p> <p>4 at all about what was on the balance sheet</p> <p>5 marked Exhibit 19?</p> <p>6 A. We hadn't spoken about 72 and</p> <p>7 68 -- I never spoke about 72 and 68. Not</p> <p>8 Friday, not Sunday.</p> <p>9 Q. Yeah, that wasn't the deal</p> <p>10 anymore, correct?</p> <p>11 A. It wasn't the deal on Friday. It</p> <p>12 wasn't the deal on Sunday.</p> <p>13 Q. Right. So going to the 49.9 I</p> <p>14 think that language next to it says premark.</p> <p>15 First off, do you have any understanding what</p> <p>16 that would mean, premark?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. I don't know who wrote this. I</p> <p>19 could tell you what I would mean.</p> <p>20 Q. What would you mean?</p> <p>21 A. That would be the amount before it</p> <p>22 was marked for losses for that day. Or gains</p> <p>23 for that day.</p> <p>24 Q. Just by way of example without</p> <p>25 reference to this document, do I understand</p>

Page 202

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 you to mean that sometime during the day if
3 there were an asset say on Friday, the 19th,
4 that had not been -- no final marks had been
5 given to that position, that would be a
6 premark type valuation?
7 A. No. I think what you refer to is
8 you start the day at some asset's worth 90 and
9 at the end of the day it's either worth 91 or
10 it's worth 89. So premark would be 90.
11 Q. Ninety, okay.
12 Postmark, 44 to 45.
13 A. Yeah. It says 45 -- 44 plus 45.
14 I don't know why that's there.
15 Q. Yeah, I guess that's right. It
16 does say that.
17 Add box, 1.9. Does that mean
18 anything to you?
19 MR. STERN: Objection to the form.
20 A. Again, I'm not sure what they're
21 referring to. But there were assets in the
22 box so there were additional assets that we
23 were trying to get into the trade.
24 Q. Do you know whether those
25 additional assets that were in the box had

Page 204

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 MR. STERN: Objection to the form.
3 Q. Again, in connection with the
4 general conversation you had with the
5 Committee on Sunday.
6 A. I don't know what -- you know,
7 again, the numbers -- I don't know what this
8 document purports to be or who drafted this.
9 That would be a lot more helpful if we're
10 going to discuss it to know whose it was.
11 It's not mine. It looks to me like that's the
12 liability side of their little mini balance
13 sheet here to say we got 47 and against it
14 we've got 45.
15 Q. 45.5.
16 A. Correct.
17 Q. The extra liabilities of 4.25 you
18 recognize those as having been the comp and
19 cure numbers -- the total, anyway, on the
20 Exhibit 19?
21 MR. STERN: Objection to the form.
22 A. Until you said that I didn't
23 recognize that as anything.
24 Q. Okay. Did you speak to the
25 Committee on Sunday about the undertaking by

Page 203

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 actually been put into the trade?
3 A. I don't know.
4 Q. Were you aware on Friday as
5 additional assets were being sought that they
6 were being sought -- 15(c)(3) assets were
7 being sought?
8 A. Yes.
9 Q. What are 15(c)(3) assets, do you
10 know?
11 A. I don't recollect the specifics.
12 But they related to -- I believe they related
13 to mortgage assets. And there was a real
14 question whether they could actually be
15 pledged, transferred, repoed or not.
16 Q. But they're not in-the-box assets,
17 though, are they?
18 A. No, I don't believe so.
19 Q. And there's no reference on this
20 document to 15(c)(3) assets, is there?
21 A. No, there's not. Not that I see.
22 Q. Let's just go over to the right
23 side while we're here. It says federal
24 liability is 45.5. Does that mean anything to
25 you?

Page 205

1 **J. SEERY - HIGHLY CONFIDENTIAL**
2 Barclays to pay comp and cure numbers?
3 A. Never came up. Not to my
4 recollection.
5 Q. Okay.
6 A. In the context of the trade it
7 was -- although those are large numbers, they
8 were small in the context of the trade.
9 Q. And I take it when you were
10 talking previously -- when Ms. Taggart was
11 questioning you about the assets being
12 transferred to Barclays being less than the
13 liabilities they were assuming, that did not
14 take into account the comp and cure numbers
15 that are in Exhibit 19, did it?
16 A. That did not -- again, to the
17 extent that those are -- I was not referring
18 to comp and cure at all.
19 Q. You were just talking about the
20 value of the assets themselves.
21 A. Yes.
22 Q. Without any --
23 A. Securities.
24 Q. -- extra liabilities being assumed
25 by Barclays, correct?

Page 206	Page 207
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 A. Correct.</p> <p>3 Q. And you also were not talking</p> <p>4 about the buildings and the data centers?</p> <p>5 A. No. I was not.</p> <p>6 Q. Okay. Now, at the bottom it</p> <p>7 refers to 8.55 and that looks to me like it</p> <p>8 says held up. Does that jog your memory?</p> <p>9 Does that mean anything to you?</p> <p>10 A. I don't recall the exact numbers</p> <p>11 but there was a portion of the repo that I</p> <p>12 mentioned related to 7 billion approximately</p> <p>13 in cash that JP -- that Barclays was prepared</p> <p>14 to buy additional repo assets and JP wanted to</p> <p>15 put to Barclays assets that Barclays didn't</p> <p>16 want and didn't believe was appropriately part</p> <p>17 of the repo.</p> <p>18 Q. It says Monday a.m. reverse trade.</p> <p>19 Do you see that at the bottom?</p> <p>20 A. Yep.</p> <p>21 Q. You didn't talk to the Committee</p> <p>22 about reversing the trade on Monday, did you?</p> <p>23 A. No. Terminating the trade.</p> <p>24 Q. Terminating the trade.</p> <p>25 A. We talked about terminating the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 trade. Not reversing the trade.</p> <p>3 Q. Not rescinding the prior</p> <p>4 termination.</p> <p>5 A. No. This doesn't say that either.</p> <p>6 This talks about -- I don't know what a re --</p> <p>7 I know what a reverse repo is but I don't know</p> <p>8 what a reverse trade is.</p> <p>9 Q. Okay. You said previously that</p> <p>10 Lehman had tried to shop itself. What was</p> <p>11 being shopped prior to the week of September</p> <p>12 15th was the sale of the entire firm, correct?</p> <p>13 A. Or an investment, yes.</p> <p>14 Q. Meaning a third-party equity stake</p> <p>15 in the firm.</p> <p>16 A. I was specifically involved with</p> <p>17 direction -- discussions with Korea</p> <p>18 Development Bank as well as with Bank of</p> <p>19 America. I don't know about other specific</p> <p>20 efforts.</p> <p>21 Q. But at no time was there a Lehman</p> <p>22 transaction prior to September 15th where</p> <p>23 Lehman was going to sell its broker/dealer</p> <p>24 operation, correct? As a stand-alone</p> <p>25 operation.</p>
Page 208	Page 209
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 MR. STERN: Objection to the form.</p> <p>3 A. Not that I know of.</p> <p>4 Q. Right. And, indeed, there was no</p> <p>5 conversation that Lehman had with any</p> <p>6 prospective purchasers concerning the sale of</p> <p>7 a business entity if Barclays purchased prior</p> <p>8 to September 19th, right?</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 Q. Of which you're aware.</p> <p>11 A. Well, no. We specifically had</p> <p>12 discussions with BofA regarding that. It was</p> <p>13 to buy the entire. But it certainly would</p> <p>14 have included those business entities.</p> <p>15 Q. Let me restate the question.</p> <p>16 A. And KDB as well.</p> <p>17 Q. There was no conversation prior to</p> <p>18 September 15th, 2008 wherein Lehman considered</p> <p>19 the sale of only the business entities that</p> <p>20 Barclays purchased, correct?</p> <p>21 A. No. We didn't actually plan on</p> <p>22 dismantling the company.</p> <p>23 Q. Yeah. Was there only one meeting</p> <p>24 that you had on Sunday, the 21st of September,</p> <p>25 where you described the transaction to the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 Committee?</p> <p>3 A. There was one long meeting with</p> <p>4 breaks. So we actually moved from -- I</p> <p>5 specifically recollect having this discussion</p> <p>6 in at least two separate rooms a couple</p> <p>7 different times and also in the waiting area</p> <p>8 outside one of the rooms with the Committee</p> <p>9 folks.</p> <p>10 And I don't recall if we did it by</p> <p>11 phone as well because they left. And I stayed</p> <p>12 there all night. And I know we talked to them</p> <p>13 and I believe they caucused with their</p> <p>14 Committee and that's when they came back and</p> <p>15 said we approve it.</p> <p>16 Q. Are you aware, Mr. Seery, at any</p> <p>17 time whether or not Lehman valued any of the</p> <p>18 assets that Barclays was considering</p> <p>19 purchasing on a fire sale basis in case the</p> <p>20 transaction did not go through?</p> <p>21 A. Did we do a fire sale valuation.</p> <p>22 I don't recollect specifically. I</p> <p>23 know we talked about what you might get for</p> <p>24 assets if we can close the transaction. But I</p> <p>25 don't know that we did a fire sale valuation.</p>

Page 210	Page 211
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 I don't recollect it.</p> <p>3 Q. Okay. You weren't involved in</p> <p>4 such a valuation.</p> <p>5 A. I don't remember. I could have</p> <p>6 been but I just don't remember it.</p> <p>7 Q. Well, did you have any involvement</p> <p>8 in preparing Mr. McDade for his testimony on</p> <p>9 Friday, the 19th?</p> <p>10 A. Yeah, a little bit.</p> <p>11 Q. What did you do?</p> <p>12 A. I was by phone. He was over at</p> <p>13 Weil with Lori Fife and I called in a couple</p> <p>14 of times, gave him some additional</p> <p>15 information, and I talked to Bart before he</p> <p>16 went on the stand in the courtroom.</p> <p>17 Q. What kind of information were you</p> <p>18 providing to him on that day in preparing for</p> <p>19 his testimony?</p> <p>20 A. I don't recall specifically. It</p> <p>21 related to the transaction, the changes from</p> <p>22 that morning. He was around some of those.</p> <p>23 All of them, frankly. To some degree or</p> <p>24 another. And the structure of the deal. And</p> <p>25 how it was going to get closed over the</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 weekend.</p> <p>3 Q. When you say the way the</p> <p>4 transaction had changed that morning there had</p> <p>5 been some, what changes do you recall having</p> <p>6 occurred?</p> <p>7 A. The ones that we talked about</p> <p>8 earlier with respect to the additional efforts</p> <p>9 to try to find additional collateral, the</p> <p>10 concerns Barclays had, the fact that the short</p> <p>11 or right side of the balance sheet had gone.</p> <p>12 Those changes.</p> <p>13 Q. Meaning the shorts.</p> <p>14 A. Yeah.</p> <p>15 Q. By the time you spoke to Mr.</p> <p>16 McDade when he was over at Weil Gotshal, had</p> <p>17 unencumbered assets been located and a</p> <p>18 decision been made to transfer them to</p> <p>19 Barclays?</p> <p>20 A. I don't recollect if they actually</p> <p>21 got any additional assets. I know they asked</p> <p>22 for them. And I thought we identified the</p> <p>23 15(c)(3)s as well as some other stuff. And if</p> <p>24 you showed me a document that says, you know,</p> <p>25 additional from the box or something. I don't</p>
Page 212	Page 213
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 recollect that they actually went to Barclays.</p> <p>3 Q. Okay. Do you have a recollection</p> <p>4 of whether you had a conversation with Mr.</p> <p>5 McDade on Friday, the 19th, as to whether</p> <p>6 those additional assets had been identified</p> <p>7 and transferred?</p> <p>8 A. I don't specifically remember what</p> <p>9 I told Mr. McDade.</p> <p>10 Q. Okay. And you said you had a</p> <p>11 phone conversation with him. And you had</p> <p>12 another conversation. Was that a personal</p> <p>13 conversation?</p> <p>14 A. I was in the courtroom with him.</p> <p>15 Q. And did you speak to him in the</p> <p>16 courtroom in any way that was -- to prepare</p> <p>17 him for his testimony?</p> <p>18 A. It wasn't a specific prep but we</p> <p>19 certainly talked about what his testimony was</p> <p>20 going to be or how he was going to be</p> <p>21 proffered.</p> <p>22 Q. I take it you didn't have any</p> <p>23 involvement in providing to Mr. McDade any</p> <p>24 fire sale prices that Lehman would have</p> <p>25 received should the transaction not go</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 through.</p> <p>3 A. Not that I recollect.</p> <p>4 Q. You know Mr. Gelband?</p> <p>5 A. Yes.</p> <p>6 Q. Did you have any conversations</p> <p>7 with him during the week of September 15th</p> <p>8 concerning the Barclays transaction?</p> <p>9 A. Not significant.</p> <p>10 Q. Okay. You didn't work with him in</p> <p>11 connection with any of the things you were</p> <p>12 doing.</p> <p>13 A. No.</p> <p>14 Q. And I take it you don't have an</p> <p>15 understanding of exactly what he was doing</p> <p>16 that week.</p> <p>17 A. He wasn't around the stuff I was</p> <p>18 doing.</p> <p>19 Q. All right.</p> <p>20 MR. CARDEN: That's all I have.</p> <p>21 Thank you, sir.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 MR. MAGUIRE: Sir, Bill Maguire,</p> <p>24 from Hughes Hubbard representing the</p> <p>25 trustee of Lehman Brothers. I'll try to</p>

Page 214	Page 215
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 be fairly brief.</p> <p>3 * * *</p> <p>4 EXAMINATION BY</p> <p>5 MR. MAGUIRE:</p> <p>6 Q. You pointed out that there was a</p> <p>7 reference on this exhibit, I believe it's 338,</p> <p>8 to add box. Do you have an understanding what</p> <p>9 the word "box" means in that context?</p> <p>10 MR. STERN: Objection to the form.</p> <p>11 A. Yeah, my understanding of the word</p> <p>12 box would be, you know, the Lehman customer</p> <p>13 box at JPMorgan.</p> <p>14 Q. Do you have any information beyond</p> <p>15 that as to what the box means in terms of the</p> <p>16 sale here to -- by Lehman to Barclays?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 Are you asking in relation to this</p> <p>19 document?</p> <p>20 Q. In the relation to the sale. Did</p> <p>21 you have an understanding of the use of the</p> <p>22 term box in connection with that sale?</p> <p>23 MR. STERN: Objection to the form.</p> <p>24 A. Yeah. I know how the box works</p> <p>25 and how it works in a repo transaction. I</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 don't have an understanding of what your</p> <p>3 question is.</p> <p>4 Q. You don't recall any discussions</p> <p>5 with anyone about transferring the box to</p> <p>6 Barclays in relation to the sale?</p> <p>7 A. No. The one nine -- I have a</p> <p>8 vague recollection the one nine was additional</p> <p>9 assets and it says here that they were from</p> <p>10 the box which would make sense. I just don't</p> <p>11 know what exactly they were or whether they</p> <p>12 actually went over.</p> <p>13 Q. And you don't recall any</p> <p>14 discussions along those lines.</p> <p>15 MR. STERN: Objection to the form.</p> <p>16 A. Not specifically at this time.</p> <p>17 Q. Let me ask you about the hearing</p> <p>18 on Friday the 19th that you attended.</p> <p>19 A. Yes.</p> <p>20 Q. That was a very long hearing.</p> <p>21 obviously.</p> <p>22 A. Yes.</p> <p>23 Q. Did there come a time when there</p> <p>24 was a recess where the judge left the</p> <p>25 courtroom and there was a discussion and then</p>
Page 216	Page 217
<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 the judge came back and court continued?</p> <p>3 A. I believe there were a few</p> <p>4 recesses.</p> <p>5 Q. Do you recall during one of those</p> <p>6 recesses there was a description about the</p> <p>7 transaction?</p> <p>8 A. During the various recesses there</p> <p>9 were numerous conversations and descriptions.</p> <p>10 I believe in one of them it was a pretty</p> <p>11 formal description to folks in the courtroom</p> <p>12 about what the changes were.</p> <p>13 Q. Do you recall any Barclays lawyer</p> <p>14 participating in any of those recess</p> <p>15 discussions?</p> <p>16 A. Barclays' lawyers were certainly</p> <p>17 there. And certainly listening. They -- the</p> <p>18 description of the changes was I believe all</p> <p>19 Weil Gotshal, Lehman's lawyers.</p> <p>20 Q. Do you recall anything that any</p> <p>21 Barclays' lawyers said?</p> <p>22 A. Not of substance. Or</p> <p>23 significance.</p> <p>24 Q. In any event, the judge returned</p> <p>25 to the courtroom and the transaction was</p>	<p>1 J. SEERY - HIGHLY CONFIDENTIAL</p> <p>2 presented to the judge.</p> <p>3 A. Yes. That's my recollection.</p> <p>4 Q. And the transaction that was</p> <p>5 presented to the judge is consistent with what</p> <p>6 your understanding was of the transaction.</p> <p>7 A. That's my recollection, yes.</p> <p>8 Q. And that was consistent with what</p> <p>9 you understood from the discussions that you'd</p> <p>10 heard during the recess.</p> <p>11 A. Yes.</p> <p>12 MR. MAGUIRE: Nothing further.</p> <p>13 (Continued on next page to include</p> <p>14 jurat.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Page 218

1J. SEERY - HIGHLY CONFIDENTIAL

2MR. STERN: Anything else?

3MS. TAGGART: Nope.

4MR. STERN: Okay.

5THE WITNESS: Thanks very much. I

6appreciate the effort getting it done

7quickly. Thanks.

8(Time Noted: 1:01 p.m.)

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20JAMES SEERY

21

22Subscribed and sworn to before me

23this ____ day of _____, 2009.

24

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Page 219

1

2C E R T I F I C A T E

3STATE OF NEW YORK)

4: ss.

5COUNTY OF NEW YORK)

6I, FRANCIS X. FREDERICK, a Notary

7Public within and for the State of New

8York, do hereby certify:

9That JAMES SEERY, the witness

10whose deposition is hereinbefore set

11forth, was duly sworn by me and that

12such deposition is a true record of the

13testimony given by the witness.

14I further certify that I am not

15related to any of the parties to this

16action by blood or marriage, and that I

17am in no way interested in the outcome

18of this matter.

19IN WITNESS WHEREOF, I have

20hereunto set my hand this 3rd day of

21September, 2009.

22

23

24FRANCIS X. FREDERICK

25

Page 220

1

2----- I N D E X -----

3WITNESS EXAMINATION BY PAGE

4JAMES SEERY MS. TAGGART 5

5MR. CARDEN 171

6MR. MAGUIRE 214

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10

11----- INFORMATION REQUESTS -----

12DIRECTIONS: NONE

13RULINGS: NONE

14TO BE FURNISHED: NONE

15REQUESTS: NONE

16MOTIONS: NONE

17

18----- EXHIBITS -----

19EXHIBITS FOR ID.

20Exhibit 337B

21Pledge Agreement dated as of

22September 7, 2008 among Lehman

23Brothers Holdings, Inc., as

24Grantor and Barclays Bank PLC,

25as Collateral Agent..... 33

Page 221

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2----- EXHIBITS -----

3EXHIBITS FOR ID.

4Exhibit 338B

5photocopy of handwritten document..... 157

6Exhibit 339B

7document bearing production

8numbers BCI-EX-(S)-00000648

9through BCI-EX-(S)-00000650..... 169

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